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Business Credit and Assistance

13

Revised as of January 1, 1989

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Business Credit and Assistance

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AS OF JANUARY 1, 1989

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Cite this Code: **CFR**

To cite the regulations in this volume use title, part and section number. Thus, **13 CFR 101.1** *refers to* **Title 13, Part 101, section 1.**

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

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(a) The incorporation will substantially reduce the volume of material published in the Federal Register.

(b) The matter incorporated is in fact available to the extent necessary to afford fairness and uniformity in the administrative process.

(c) The incorporating document is drafted and submitted for publication in accordance with 1 CFR Part 51.

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III). A list of CFR Titles, Chapters, and Parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of "Title 3—The President" is carried within that volume.

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Martha L. Girard
Acting Director,
Office of the Federal Register.

January 1, 1989.

THIS TITLE

Title 13—Business Credit and Assistance is composed of one volume. This volume contains Chapter I—Small Business Administration, Chapter III—Economic Development Administration, Department of Commerce and Chapter V—Regional Action Planning Commissions. The contents of this volume represent all current regulations codified under this title of the CFR as of January 1, 1989.

A distribution table appears in the Finding Aids section of this volume.

For this volume Lucy Belton and Tracey L. Gregg were Chief Editors. The Code of Federal Regulations publication program is under the direction of Richard L. Claypoole, assisted by Ruth C. Pontius.

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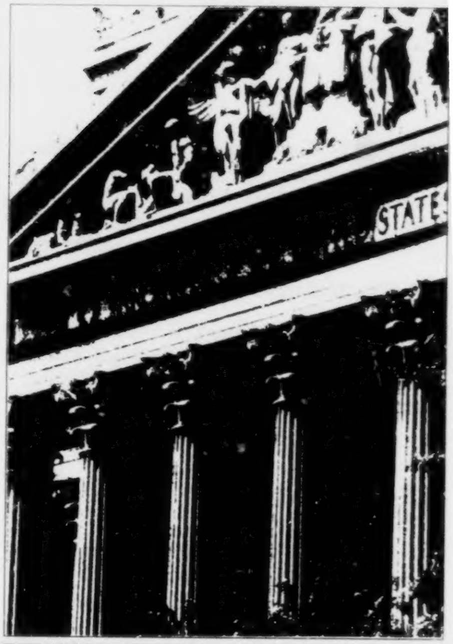

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ABBREVIATIONS USED IN THIS CHAPTER:

SBA=Small Business Administration.
SBID=The Small Business Investment Division of SBA.
RFC=Reconstruction Finance Corporation.

CROSS REFERENCE: For regulations of the Securities and Exchange Commission, see 17 CFR Chapter II.

PART 101—ADMINISTRATION

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AUTHORITY: Secs. 4 and 5, Pub. L. 85-536, 72 Stat. 384 and 385 (15 U.S.C. 633 and 634, as amended); sec. 308, Pub. L. 85-699, 72 Stat. 694 (15 U.S.C. 687, as amended); sec. 5(b)(11), Pub. L. 93-386 (Aug. 23, 1974); and 5 U.S.C. 552.

SOURCE: Sections 101.2—101.2-16 appear at 47 FR 2074, Jan. 14, 1982, unless otherwise noted.

Sections 101.4 through 101.9 appear at 39 FR 43815, Dec. 19, 1974, unless otherwise noted.

§ 101.1 Purpose, function, general organization.

(a) *Purpose.* To aid, counsel, assist, and protect the interests of small business concerns and to help victims of disasters.

(b) *Functions*—(1) *Procurement and technology assistance.* To insure that a fair proportion of the total Government purchases and contracts or subcontracts for property and services for the Government be placed with small business enterprises by, among other things, certifying as to the competency of small business concerns to perform such contracts, or subletting contracts to small business concerns on which the Agency is prime contractor; to insure that a fair proportion of the total sales of Government property be made to small business enterprises; and to assure that small businesses obtain the benefit of Government sponsored research and development.

(2) *Management assistance.* To improve the management skills of owners, potential owners, and managers of small business concerns with direct action programs and through established channels of business relations; to provide technical and product assistance to small business concerns; and to inventory productive facilities of small business concerns.

(3) *Financial assistance.* To make loans to small business concerns and to victims of floods or other catastrophes, including loans to small business concerns suffering economic injury as a result of displacemnt by Federal construction, inability to process products for human consumption because of undetermined disease, and need to make changes in facilities or methods of operation because of various Federal laws imposing safety and health requirements; to make direct or band participation loans on the basis of certifications made by the Secretary of Commerce to assist firms, large and small, to adjust to changed economic conditions resulting from increased competition from imported articles; and to make loans to state and local

development companies for purpose of assisting small business concerns.

(4) *Guaranteeing surety bonds.* To guarantee sureties of small businesses against portions of losses resulting from the breach of bid, payment or performance bonds.

(5) *Small business investment companies.* To provide venture capital in the form of equity financing and long-term loan funds to small business concerns and provide advisory services to such concerns through small business investment companies; to license small business investment companies, regulate the operations of such companies, and purchase or guarantee the purchase of debentures from small business investment companies to supplement their capital requirements for the financing of small business concerns.

(6) *Advocacy of small business interests.* To protect the interests of small businesses as they may be adversely affected by activities of other parts of this chapter.

(7) *Further functional description.* The more detailed program functions of the Agency are set forth in other sections of this part and other parts of this chapter.

(c) *General organization.* (1) Management of the Small Business Administration is vested in an Administrator appointed by the President with the advice and consent of the Senate. The Administrator is authorized to appoint three associate administrators under the Small Business Act and one associate administrator under the Small Business Investment Act. The Administrator is authorized to appoint a Deputy Administrator who shall be Acting Administrator of the Administration during the absence or disability of the Administrator or in the event of a vacancy in the Office of the Administrator. The Administrator is authorized, subject to the Civil Service and Classification Laws, to select, employ, appoint and fix the compensation of such officers, employees, attorneys and agents as shall be necessary to carry out the provisions of the Small Business Act and the Small Business Investment Act. Authority to the field offices flows from the Administrator to the Regional Administrators.

(2) The headquarters of the Small Business Administration is located at 1441 L Street N.W., Washington, D.C. 20416.

(d) *Applicable law.* (1) Loans made by SBA are authorized and executed pursuant to Federal programs adopted by Congress to achieve national purposes of the U.S. Government.

(2) Instruments evidencing a loan, obligation of security interest in real or personal property payable to or held by the Administration or the Administrator, such as promissory notes, bonds, guaranty agreements, mortgages, deeds of trust, and other evidences of debt or security shall be construed and enforced in accordance with applicable Federal law.

(3) In order to implement and facilitate these Federal loan programs, the application of local procedures, especially for recordation and notification purposes, may be utilized to the fullest extent feasible and practicable. However, the use of local procedures shall not be deemed or construed to be any waiver by SBA of any Federal immunity from any local control, penalty, or liability.

(4) Any person, corporation, or organization that applies for and receives any benefit or assistance from SBA, or that offers any assurance or security upon which SBA relies for the granting of such benefit or assistance, shall not be entitled to claim or assert any local immunity to defeat the obligation such party incurred in obtaining or assuring such Federal benefit or assistance.

[44 FR 76757, Dec. 28, 1979]

§ 101.2 Organization and functions of the Central Office—Administrator.

The Administrator is responsible to the President and the Congress for exercising direction, authority and control over the Small Business Administration. The Administrator determines and approves all policies covering the Agency's programs to aid, counsel, assist and protect the interests of the Nation's small business concerns; delegates authority, (except the authority to approve or disapprove pool loans, applied research programs and defense production pools, as set forth in sections 7(a)(6), 9(d) and 11 of the Small Business Act) to the Deputy Administrator, the Associate Deputy Administrator, associate and assistant administrators, other Central Office officials reporting directly to the Administrator and regional administrators; consults with Federal, State and local agencies on behalf of small business interests in the national economy; reports to the President and the Congress on Agency program accomplishments and problems; periodically evaluates the performance, accomplishments and short and long range planning goals of the Central Office and the regions with and through officials reporting directly to the Administrator; and maintains, as a responsibility of the Office, the activities related to equal employment opportunity; SBA advisory councils; hearings and appeals in their formal stage; congressional relations and legislative review; legal services; and investigatory, security and internal and external audit programs.

§ 101.2-1 Office of Administration.

Develops plans, procedures, and standards for effective implementation of automated data services, administrative services (including emergency preparedness activities), and labor-management relations. Develops data management and information systems and procedures to effectively strengthen and improve the planning, program evaluation, loan accounting, management assistance, procurement assistance, minority small business, and internal administrative accounting and personnel functions of the Agency. Responsible for development of plans, operating procedures, and standards to effectively strengthen and improve the provision and management of data processing, data communications, computer systems analysis, and management science services within SBA. Represents the Administrator as delegated, in negotiations with other Government agencies on matters relating to office programs and activities, and develops goals and objectives for Agency management support and data management activities. Reviews and evaluates the effectiveness of all Agency administrative programs.

§ 101.2-2 Office of Personnel.

Develops and recommends policies concerning the personnel programs and related activities. Develops plans, procedures and standards to effectively strengthen and improve the Agency's personnel program, including position classification, recruitment, selection, placement, promotion, separation, pay and wage administration, performance evaluation and incentives, grievances and appeals, conduct and discipline, training and career development, personnel records management and employee services. Plans, directs, coordinates and executes Agencywide personnel management program reviews. Provides technical advice, assistance and support to Central Office officials relating to the personnel program. Reviews and processes all field office personnel actions requiring Central Office approval. Maintains liaison with the Office of Personnel Management in matters relating to the development, interpretation and application of personnel regulations and procedures. Develops, plans and establishes standards to provide for effective analysis and improvement of the Agency organization. Maintains an organizational plan which describes the structure and functions of the organizational units and the location and geographical responsibilities of the field offices, etc. Directs the conduct of organizational studies as requested by the Administrator or other top management officials of SBA, or on a continuing basis as necessitated by changes in staffing requirements and/or shifts in program emphasis or direction.

§ 101.2-3 Office of Field Management.

Develops plans, procedures and standards for effective implementation of field services and field review programs. Provides advice and guidance to regional administrators on all matters relating to their administrative and program management responsibilities and, as necessary, serves as a liaison between them and other key

Central Office officials in achieving specific goals and objectives. Evaluates field office performance in terms of program and management activities, determining strengths and weaknesses, and recommends corrective actions where appropriate. Serves as the focal point of contact between the Central Office and regional administrators. Receives and evaluates input from the field on aspects of SBA programs and policies as they affect SBA's performance in the regions and districts, and coordinates with Central Office program and staff personnel to effect such revisions as may be appropriate. Plans, arranges and participates in periodic high level conferences between key Central and field office officials on matters involving program or policy issues. Recommends lines of authority and responsibility of regional administrators and coordinates their efforts for attainment of predetermined objectives with the Office of Policy, Planning and Budgeting. Analyzes reports involving field visits by Central Office personnel and insures that corrective action is taken on any problems outlined therein.

§ 101.2-4 Office of Equal Employment Opportunity and Compliance.

Develops and recommends policies concerning the Equal Employment Opportunity and Compliance (EEO & C) programs. Develops plans, operating procedures and standards to effectively strengthen and improve the Agency's civil rights, equal employment opportunity and compliance programs and activities. Administers the Agency's discrimination complaint process. Serves as principal liaison with other Federal agencies and non-federal organizations concerned with civil rights. Directs, coordinates and administers compliance programs and activities executed by Central Office staff. Provides advice, assistance and support to the Administrator in relation to the EEO & C program. The Director, Office of EEO & C serves as the Agency's equal employment opportunity officer, civil rights coordinator, compliance officer and as the Administrator's designee in making the final decision on discrimination complaints and ordering corrective measures, except when otherwise specified by the Administrator.

[47 FR 4981, Feb. 3, 1982]

§ 101.2-5 Office of the Inspector General.

To effectuate the Congressional intent underlying enactment of Pub. L. 95-452, which Act mandates the establishment of independent and objective offices within enumerated executive agencies to provide leadership and coordination and recommend policies designed to promote economy, efficiency, effectiveness and prevent and detect fraud and abuse in the administration of Agency programs and operations, the Office of the Inspector General develops and implements plans, procedures and standards for the conduct, by that office, of audits, investigations and inspections relating to Agency programs, operations, personnel and physical security. Reports the findings of such audits, investigations and inspections to appropriate Agency officials, which report shall include recommendations designed to assist in the development and implementation of measures to correct deficiencies noted in the programs and operations so reviewed. Monitors the nature, scope and results of remedial or other action taken by Agency officials in response to such findings and recommendations and report to the Administrator on the status of such action and on the continuing existence of significant deficiencies requiring remedial action to ensure protection of the Agency's programs and operations. Reviews existing and proposed legislation and regulations relating to Agency programs and operations to determine their impact on the economy and efficiency of, or on the prevention or detection of fraud and abuse in, such programs and operations. Prepares on a semi-annual basis and more frequently if necessary, a report for the Administrator and appropriate committees of Congress which shall include, but not necessarily be limited to, a description of significant deficiencies and abuses disclosed by the Inspector General's activities, the nature of the recommendations for corrective action made by that office, the status of remedial or other action instituted by Agency officials on the basis of these findings and recommendations, and a summary of those criminal matters referred by the Inspector General directly to the Attorney General for further investigative or prosecutive action. Effects liaison with appropriate Federal, State and local governmental agencies and nongovernmental entities as may be necessary to meet office responsibilities as they relate to the economy, efficiency, integrity and security of Agency programs and operations. Initiates such other action as the Inspector General may deem to be reasonable and necessary in carrying out the office's responsibilities pursuant to Pub. L. 95-452 and regulations promulgated pursuant thereto.

§ 101.2-6 Office of Advocacy.

Under the direction of the Administrator, directs the planning and development of government-wide public policies and administrative vehicles which enforce a nationwide program of Advocacy of small businesses; serves as chief spokesperson of such program; and otherwise carries out the mandate of Pub. L. 94-305. Responsible for ensuring that major government-wide policy directions enhance the economic viability of the largest possible number of small businesses. Ensures that the end results of such policies and administrative procedures, in furtherance of the statutory requirements include, but are not limited to, the following:

(a) Expanding small business in such a way as to enhance employment opportunities; (b) Working toward improving the tax structure in order to improve the viability and growth of small business; (c) Addressing all major Federal functions impinging on small business with the proper guidance, direction and instruction to assure a uniformity of purpose and approach which benefits small business and promotes or stimulates competition; and (d) Developing and recommending approaches to the ways and means of educating and training existing and potential small businesspersons, and developing incentives for entrepreneurship which assure equality of access to such entrepreneurs. Works with all programs and all regions of SBA in assuring concerted and uniform policy interpretation and implementation. Directs the analysis of economic trends, the changing impact of government expenditures and tax policies, and government regulations on the growth of the small business sector in our economy; provides appropriate evaluation and assessment tools with which to measure successful implementation of the Advocacy effort. Reviews and analyzes, on behalf of the SBA, the impact of existing and proposed legislation and regulations of other agencies of the Federal Government, and State and local governments on small business.

§ 101.2-7 Office of General Counsel.

Develops and recommends policies governing SBA legal functions and activities. Develops plans, procedures and standards for providing legal services in support of SBA program operations, including execution of loan closing and litigation activities by Agency counsel. Analyzes and interprets legislation, regulations and orders relating to the operation of the Small Business Administration. Advises the Administrator, Deputy Administrator, Associate Deputy Administrator and all other SBA officials on the legal aspects of the development and execution of policies and programs. Negotiates with Federal agencies as to the legal aspects of matters pertaining to the responsibilities of SBA and drafts resultant agreements. Develops legal theories incorporated in requests to the Comptroller General or to other Federal agencies for decisions in matters of interest to small business. Provides legal counsel, advice and assistance to Central Office officials in connection with financial, investment, administrative, technical, procurement and management assistance, and minority enterprise programs, and in the formation of defense production and research and development pools, in matters of Agency administration and in connection with any other matters having legal implications for the Agency. Within approved policies, gives direct legal advice and assistance to the field offices and exercises technical supervisory responsibility with respect to legal functions in the field offices. Also, advises on eligibility of applicants for assistance from SBA. Advises with respect to servicing and liquidation of loans. Assists and participates with the Department of Justice in litigation arising from delinquent loans and other SBA program activities. Prosecutes administrative proceedings pursuant to the Small Business Investment Act. Reviews legislative proposals affecting small business and develops recommendations for the Office of Management and Budget and congressional committees; prepares legislative proposals relating to SBA; and develops reports for congressional hearings or the Executive Office of the President. Develops program goals and objectives within the framework of approved policies. Reviews and evaluates legal program effectiveness, including onsite visits to evaluate field office performance. Maintains liaison with governmental and other agencies having activities related to the legal functions of the Agency. The General Counsel serves as Agency designee to the Administrative Conference of the United States, and as chairperson of the Standards of Conduct Committee.

§ 101.2-8 Office of Hearings and Appeals.

Conducts administrative hearings and other proceedings in connection with appeals, grievances and other disputes in the Small Business Administration. Conducts, or arranges for, hearings and other proceedings to adjudicate disputes, decide appeals, or recommend decisions pertaining to such matters as: SBIC enforcement proceedings; termination, including graduation of 8(a) program participants; adjudication of findings of noncompliance with Parts 112 and 113 of SBA's Rules and Regulations, Title 13, CFR, by applicants for or recipients of assistance from SBA; Revocation of applicant representative's privilege to appear before SBA; and personnel grievances (in their formal stage). Handles other such matters as may be assigned from time to time by the Administrator. Develops and implements Agency policies and procedures to effectively strengthen and improve dispute-related decision making in SBA. Consults with program and staff offices as necessary to fulfill assigned responsibilities. Recommends appropriate changes in existing regulations and laws to improve the process of dispute-related decision making within SBA.

§ 101.2-9 Office of International Trade.

Develops new methods and techniques for assisting small businesses entering international markets. Plans, develops, and implements programs to encourage small business participation in international trade. To assure that adequate consideration is given to small business interests in the Federal Government's export expansion program, coordinates the SBA International Trade Program with the Department of Commerce, the Export-Import Bank of the U.S., the Agency for International Development, and other departments of the Federal and State governments. Assures that the International Trade Program provides individual counseling to small business concerns to assess the feasibility of their export marketing plans and to determine and obtain necessary international trade data from Government and private sources. Assures that SBA field office designees assigned international trade responsibilities are provided adequate information and material so that international trade counseling and training services can be rendered through SBA field offices. Develops programs in cooperation with operating units of the Department of Commerce to assure that small business will be afforded maximum opportunities and benefits from participation in overseas trade centers, trade fairs, and trade missions. Coordinates the SBA International Trade Program with other SBA units having major operating programs, such as the offices of Management Assistance, Procurement Assistance, and Minority Small Business and Capital Ownership Development, and the Financial Assistance and Investment, in order to provide small business concerns with the full benefits of the Agency's program of assistance in the development of international marketing plans. Provides advice, assistance, and support to Central Office officials relating to the International Trade Program. Establishes and maintains liaison with the offices of Advocacy and Public Affairs to insure that SBA export programs are made more effective by working with foreign governments and foreign visitors to achieve maximum potential. Maintains liaison with other Federal agencies and professional and trade associations whose activities relate to the International Trade Program. Develops program goals and objectives within the framework of approved policies. Reviews and evaluates program effectiveness.

§ 101.2-10 Office of Finance and Investment.

(a) *Office of Finance and Investment.* Develops plans, operating procedures and standards to effectively strengthen and improve the Agency's finance and investment programs designed to meet the existing and potential needs of the small business community. Develops and recommends policies concerning the financial assistance programs, including the control and management of the loan portfolio, the servicing of disaster home, farm and business loans and the liquidation of defaulted loans. Develops program goals and objectives within the framework of approved policies. Reviews and evaluates program effectiveness. Plans, directs and administers the small business investment company (SBIC) program, including licensing and lending, and proposes regulations to effectively strengthen and improve the Agency's programs of venture capital assistance to small businesses. Provides technical advice, assistance and support to the Office of the Administrator relating to finance, investment, surety bond guarantee and pollution control financing guarantee program matters. Represents the Administrator as specifically delegated in negotiations with other Government agencies whose activities relates to finance and investment program areas.

(b) *Financial Assistance Division.* Develops and recommends policies concerning the loan programs, including related activities of liquidation and disposal. Develops plans, operating procedures and standards to effectively strengthen and improve the Agency's financial programs designed to meet the existing and potential needs of the small business community. Plans, directs and administers the bank certification and other lender related functions. Also, plans, directs and administers the Small Business Lending Company (SBLC) Program, including approving and providing necessary regulatory oversight. Develops program goals and objectives within the framework of approved policies. Reviews and evaluates program effectiveness.

(c) *Disaster Assistance Division.* Plans, directs and administers the Agency's disaster operations through development of policies and procedures for contingency planning, administration during the disaster and disaster maintenance. Recommends physical disaster declarations to the Administrator. Insures the speedy and effective delivery of disaster services. Maintains liaison with other Government agencies to operate the disaster assistance program.

(d) *Investment Division.* Develops plans, operating procedures and standards to effectively strengthen and improve, the Agency's Investment program designed to meet the existing and potential needs of the small business community. Develops and recommends policies concerning the Investment and Special Guarantee programs. Plans, directs and administers the secondary market liaison function. Plans, directs and administers the Small Business Investment Company and Minority Small Business Investment Company programs, including licensing and lending, and proposes regulations to effectively strengthen and improve the Agency's program of venture capital assistance to small businesses. Continually evaluates the effectiveness of the programs. Represents the Administrator as specifically delegated in negotiations with other Government agencies whose activities relate to the investment program areas. Plans, directs and administers the Agency's special guarantee programs and continually evaluates the operations of these programs, including reinsured lease guaranty cases.

§ 101.2-11 Office of Management Assistance.

Develops and recommends policies concerning Agency management assistance programs. Insures the effective delivery of management assistance programs to recipients. Develops plans, operating procedures and standards to effectively strengthen and improve the Agency's management training, counseling and publications programs to meet existing and potential needs of the small business community. Develops plans, operating procedures, standards, goals and objectives for providing management assistance through volunteer or contract activity. Develops and recommends policies and procedures for the administration of the Small Business Development Center program. Develops and recommends policies concerning Agency use of volunteer management assistance groups, such as SCORE (Service Corps of Retired Executives) and ACE (Active Corps of Executives) and maintains active liaison on behalf of SBA with such groups. Provides technical advice, assistance, guidance and support to Central Office officials with respect to the management assistance programs. Maintains liaison with other SBA organizational components, other Federal agencies, and with various state, private sector and professional organizations on matters relating to the management assistance programs.

§ 101.2-12 Office of Procurement and Technology Assistance.

Develops and recommends policies concerning SBA's procurement assistance, technology assistance and natural resources sales assistance programs. Develops plans, operating procedures and standards to effectively strengthen and improve the Agency's prime contract assistance, subcontracting assistance, natural resources sales assistance, technology assistance, industrial support services (which provides certificates of competency), research and development programs. Provides for the automated referral of small business sources to meet the needs of the small business community and the government and private sector procurement community. On receipt at headquarters level of specific complaints by individual small business contractors, arranges and participates in hearings with policy officials of cognizant Federal agencies to present the position of the complainants and seek amendatory action. Develops program goals and objectives within the framework of approved policies. Reviews and evaluates program effectiveness. Provides for and coordinates SBA participation at procurement and natural resources sales conferences sponsored by other Federal agencies on behalf of Congressional or local sponsors. Represents SBA at the staff levels of departments and agencies in the Executive Branch regarding matters involving procurement and technology assistance activities. Recommends and participates in the development and preparation of interagency agreements and related policies and regulations. Develops and coordinates, in conjunction with the Office of Policy, Planning and Budgeting and the Office of Advocacy, requirements for economic studies to be utilized in strengthening SBA procurement assistance programs. Develops, coordinates and negotiates with the Office of Federal Procurement Policy, Department of Defense, General Services Administration and other Government agencies, programs, policies, goals, regulations and procedures to ensure that a fair portion of the total Government contracts, including subcontracts and natural resource sales contracts, is placed with small business concerns.

§ 101.2-13 Office of Minority Small Business and Capital Ownership Development.

Formulates policies for and administers the Minority Small Business and Capital Ownership Development (MSB-COD) Program. Mobilizes the resources of all SBA programs for the development and expansion of minority enterprise. Coordinates and recommends policies relating to other Agency programs which provide assistance to minority small business, including section 8(d) of the Small Business Act, as amended. Formulates policy for, and makes all final determinations of, eligibility of small business concerns seeking contract assistance under the 8(a) procurement program. Formulates policies for use and administration of contracts, grants, and agreements, providing financial assistance to public or private organizations which furnish technical and management assistance to individuals or small business concerns eligible for assistance under the small business, capital ownership development, and economic opportunity loan programs. Promotes, on a nationwide basis, the Agency's 8(a) and other procurement programs to increase the participation and support of industrial concerns, professional and trade associations, local governments, and community groups in developing entrepreneurship opportunities for disadvantaged groups, including minorities, in manufacturing, construction, and service related industries. Develops plans, operating procedures, and standards to effectively strengthen and improve the Agency's MSB-COD Program. Develops program goals and objectives within the framework of approved policies. Reviews and evaluates program effectiveness. Provides direction and emphasis in the coordination of all Agency programs to achieve the objectives of the MSB-COD effort. Evaluates the performance of the field offices to insure compliance with MSB-COD program policies and procedures. Represents the Administrator at interagency meetings for the purpose of coordinating programs and activities that effect or contribute to the growth of minority enterprise and capital ownership development. Serves in this capacity, in cooperation with the Office of Procurement Assistance, and the Financial Assistance, Investment, and Management Assistance divisions at other interagency meetings involving negotiations with Federal agencies whose activities relate to MSB-COD programs. Confers with top representatives of industry, trade associations, local government, and community action groups to enlist their substantial participation and involvement in the MSB-COD program. Promotes their cooperation in the development of minority enterprises and entreprenuerships in the disadvantaged areas. Negotiates basic agreements with industries for the establishment of local outlets and franchises and for the provision of management and technical assistance and other types of support. Coordinates with and invites participation by the Office of Procurement and Technology Assistance in meetings and conferences that include representatives of manufacturing and construction industries. Works with the Office of Procurement and Technology Assistance in the development of policies and procedures governing the combined MSB-COD and PA effort to involve minorities in the manufacturing, construction, and related industries. Maintains liaison and cooperation with the Committee on Small Business and Minority Business Ownership regarding placement of subcontracts with small business concerns located in areas with high concentrations of unemployed or low-income individuals, with small businesses owned by low-income individuals, and with small businesses eligible to receive contracts under the 8(a) program.

§ 101.2-14 Office of External Affairs.

Develops and recommends plans, procedures and standards to effectively strengthen and improve the congressional relations and advisory councils programs of the Agency. Serves as liaison with Members of Congress, congressional committees, commissions and Executive agencies in relation to program matters involving congressional activities affecting SBA. Keeps the Administrator and key officials of the Agency informed of the activities of congressional committees as they relate to the programs and activities of SBA. Develops congressional and legislative affairs program goals and objectives within the framework of approved policies. Reviews and evaluates program effectiveness. Responsible for commenting on legislation deemed to have or suitable for having an impact on SBA programs (other than that prepared by SBA or OMB) and for final assessment of all Agency comments before submission to the Administrator. Maintains liaison with OMB regarding clearance of Agency testimony by the Office of the President. Plans, organizes and participates in the meetings of the National Advisory Council. Participates with and assists, through the Office of Field Management, field personnel in the meetings of regional advisory councils. Recommends the appointment of persons to serve on the advisory councils.

§ 101.2-15 Office of Public Affairs.

Develops and implements plans, operating procedures and standards to improve and present the Agency's public communications efforts. Develops and recommends public communications program goals and objectives. Reviews and evaluates program effectiveness Establishes and maintains liaison with the news media, trade associations, chambers of commerce and similar groups to promote their involvement in informing the public about the contributions of, and opportunities in, small business and Agency policies, programs and objectives. Directs development of Agency guidelines for making information and/or records available for public use in conformance with the Freedom of Information Act and the Privacy Act.

§ 101.2-16 Office of Policy, Planning and Budgeting.

Coordinates the development of Agency policy, plans, programs, goals, and objectives as they relate to planning, policy, and budgeting. As the principal planning office of the Agency, develops and directs the preparation of Agency program memoranda as required by the Office of Management and Budget and coordinates with program offices in the developing and maintaining of the SBA Five-Year Plan. Develops policies, plans, systems, and procedures to effectively strengthen and improve the planning and program evaluation functions of the Agency and all of its program activities. Responsible for the formulation of a system of goals, policies, procedures, and regulations for regional management that reflects and implements the basic objectives and goals of the Agency. Directs and ensures the conduct of economic, cost benefit, program analysis, and special studies of Agency activities to provide the Administrator and program managers with alternate courses of action and policy. Directs the development of and recommends new and changed size standards for all SBA programs. Is responsible for the determination and interpretation of the SBA size standards. Conducts studies, in cooperation with program offices, involving across-the-board investigations of SBA programs, to measure their effectiveness in terms of costs, benefits, and other considerations. Serves as the central analytical staff to review and evaluate, in conjunction with appropriate program offices, evaluation studies submitted to the Administrator. Represents the Administrator in negotiations with the Office of Management and Budget, GAO, Treasury Department, and other agencies on budgeting, accounting, and fiscal matters. Responsible to the Administrator for the Agency's overall budgeting, accounting, and fiscal activities.

§ 101.3 Organization and functions of the field offices.

(a) *Regional office.* An SBA office, headed by a regional administrator, it is the principal field office of the Agency, responsible and responsive to the Central Office. The city locations and geographical boundaries of each of the 10 regional offices were designated by the President in a statement on May 2, 1969. Such office exercises full authority and supervisory responsibility for:

(1) The execution of all field activities within the region;

(2) Supervision of all district offices within the region.

(b) *District office.* An SBA office headed by a district director, located in a city designated by the Administrator within a defined, limited, and contiguous geographical area within the region. Such office is responsible and responsive to the regional office for the region in which it is located. Except for restrictions based on delegations of authority, the district office has full authority and supervisory responsibility for:

(1) The execution of all field activities within the district boundaries;

(2) Supervision of all branch offices and post-of-duty stations located within the district boundaries; and

(3) Providing subordinate branch offices and post-of-duty stations within the technical capability necessary to execute assigned programs.

(c) *Branch office.* An SBA office headed by a branch manager, located in a city designated by the Administrator within a defined, limited, contiguous geographic area, within a district. Such office is directly responsible and responsive to the district office within whose boundaries it is located. It executes one or more elements of the business or disaster loan programs and has limited authority for program execution.

(d) *Post-of-duty station.* An SBA office headed by an officer-in-charge, located in a city designated by the Administrator within a district. Such office is directly responsible and responsive to the district office within whose boundaries it is located. It performs tasks required to promote and support the business and disaster loan programs and procurement and management assistance activities. It has no authority for program execution.

[44 FR 76757, Dec. 28, 1979]

§ 101.3-1 Listing of field offices.

(a) *Region I.* Regional Office, 60 Batterymarch Street, Boston, MA 02110. Has jurisdiction over the following district offices and posts-of-duty:

(1) 150 Causeway Street, Boston, MA 02114. Serves Massachusetts.

(2) 302 High Street, Holyoke, MA 01050 (post-of-duty). Serves the following counties in Massachusetts: Berkshire, Franklin, Hampden, and Hampshire.

(3) 40 Western Avenue, Augusta, ME 04330. Serves Maine.

(4) 55 Pleasant Street, Concord, NH 03301. Serves New Hampshire.

(5) One Financial Plaza, Hartford, CT 06103. Serves Connecticut.

(6) 87 State Street, Montpelier, VT 05602. Serves Vermont.

(7) 40 Fountain Street, Providence, RI 02903. Serves Rhode Island.

(b) *Region II.* Regional Office, 26 Federal Plaza, New York, NY 10007. Has jurisdiction over the following district offices, branch offices, and posts-of-duty:

(1) 26 Federal Plaza, New York, NY 10007. Serves the following counties in New York: Bronx, Delaware, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester.

(2) 401 Broad Hollow Road, Melville, NY 11747 (branch office). Serves the following counties in New York: Nassau and Suffolk.

(3) Chardon and Bollivia Streets, Hato Rey, PR 00918. Serves the Commonwealth of Puerto Rico and the U.S. Virgin Islands.

(4) Veterans Drive, St. Thomas, VI. 00801 (post-of-duty). Serves the U.S. Virgin Islands.

(5) 970 Broad Street, Newark, NJ 07102. Serves New Jersey.

(6) 1800 East Davis Street, Camden, NJ 08104 (post of duty). Serves the following counties in New Jersey: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem.

(7) 100 South Clinton Street, Syracuse, NY 13260. Serves the following counties in New York: Allegany, Albany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Tioga, Tompkins, Warren, Washington, Wayne, Wyoming, and Yates.

(8) 111 West Huron Street, Buffalo, NY 14202 (branch office). Serves the following counties in New York: Allegany, Cattaraugus, Chautauqa, Erie, Genesee, Niagara, Orleans, Wyoming.

(9) 180 State Street, Elmira, NY 14901 (branch office). Serves the following counties in New York: Broome, Chemung, Schuyler, Steuben, Tioga, and Tompkins.

(10) 99 Washington Avenue, Albany, NY 12210 (post-of-duty). Serves the following counties in New York: Albany, Columbia, Greene, Rensse-

laer, Saratoga, Schenectady, Schoharie, Warren, and Washington.

(11) 100 State Street, Rochester, NY 14614 (post-of-duty). Serves the following counties in New York: Livingston, Monroe, Ontario, Seneca, Wayne, and Yates.

(c) *Region III.* Regional Office, 231 St. Asaphs Rd., Bala Cynwyd, PA 19004. Has jurisdiction over the following district and branch offices:

(1) 231 St. Asaphs Rd., Bala Cynwyd, PA 19004. Serves Delaware and the following counties in Pennsylvania; Adams, Berks, Bradford, Bucks, Carbon, Chester, Clinton, Columbia, Cumberland, Dauphin, Delaware, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mifflin, Monroe, Montgomery, Montour, Northampton, Northumberland, Perry, Philadelphia, Pike, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, and York.

(2) 100 Chesnut Street, Harrisburg, PA 17101 (branch office). Serves the following counties in Pennsylvania: Adams, Clinton, Cumberland, Dauphin, Juniata, Lancaster, Lebanon, Lycoming, Mifflin, Montour, Northumberland, Potter, Snyder, Tioga, Union, and York.

(3) 20 North Pennsylvania Avenue, Wilkes-Barre, PA 18702 (branch office). Serves the following counties in Pennsylvania: Bradford, Carbon, Columbia, Lackawanna, Luzerne, Monroe, Pike, Sullivan, Susquehanna, Wayne, and Wyoming.

(4) 844 King Street, Wilmington, DE. 19801 (branch office). Serves Delaware.

(5) 8600 LaSalle Road, Towson, MD 21204. Serves Maryland, except the counties of Montgomery and Prince Georges.

(6) 109 North Third Street, Clarksburg, WV 26301. Serves West Virginia.

(7) Charleston National Plaza, Charleston, WV 25301 (branch office). Serves the following counties in West Virginia: Boone, Braxton, Cabell, Calhoun, Clay, Fayette, Gilmer, Greenbrier, Jackson, Kanawha, Lincoln, Logan, Mason, McDowell, Mercer, Mingo, Monroe, Nicholas, Pocahontas, Putnam, Raleigh, Roane, Summers, Wayne, Webster, Wirt, and Wyoming.

(8) 1000 Liberty Avenue, Pittsburgh, PA 15222. Serves the following counties in Pennsylvania: Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Centre, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Franklin, Fulton, Greene, Huntington, Indiana, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington, and Westmoreland.

(9) 400 North Eighth Street, Richmond, VA 23240. Serves Virginia, except the counties of Arlington, Fairfax, and Loudoun.

(10) 1030 Fifteenth Street, NW., Washington, DC 20416. Serves the District of Columbia, the Maryland counties of Montgomery and Prince Georges, and the Virginia counties of Arlington, Fairfax, and Loudoun.

(d) *Region IV.* Regional Office, 1375 Peachtree Street, NE., Atlanta, GA 30309. Has jurisdiction over the following district offices, branch offices, and posts-of-duty:

(1) 1720 Peachtree Street, NW., Atlanta, GA 30309. Serves Georgia.

(2) 908 South 20th Street, Birmingham, AL 35205. Serves Alabama.

(3) 230 S. Tryon Street, Charlotte, NC 28202. Serves North Carolina.

(4) 215 South Evans Street, Greenville, NC 27834 (post-of-duty). Serves the following counties in North Carolina: Beaufort, Bertie, Brunswick, Camden, Carteret, Currituck, Chowan, Columbus, Craven, Dare, Duplin, Edgecombe, Gates, Greene, Halifax, Hertford, Hyde, Jones, Lenoir, Martin, Nash, New Hanover, Onslow, Pamlico, Perquimans, Pasquotank, Pitt, Pender, Tyrell, Washington, Wayne, Wilson, and Northampton.

(5) 1835 Assembly Street, Columbia, SC 29201. Serves South Carolina.

(6) 100 West Capitol Street, Jackson, Miss. 39201. Serves Mississippi.

(7) 111 Fred Haise Blvd., Biloxi, Miss. 39530 (branch office). Serves the following counties in Mississippi: Forest, George, Greene, Hancock, Harrison, Jackson, Lamar, Marion, Pearl River, Perry, Stone.

(8) 400 West Bay Street, Jacksonville, FL 32202. Serves the following counties in Florida: Alachua, Baker, Bay, Bradford, Calhoun, Citrus, Clay, Columbia, Dixie, Duval, Escambia,

Flagler, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Hernando, Holmes, Jackson, Jefferson, Lafayette, Lake, Leon, Levy, Liberty, Madison, Marion, Nassau, Okaloosa, Orange, Putnam, Santa Rosa, St. Johns, Seminole, Sumter, Suwannee, Taylor, Union, Volusia, Wakulla, Walton, and Washington.

(9) 600 Federal Place, Louisville, KY 40201. Serves Kentucky.

(10) 2222 Ponce de Leon Blvd., Coral Gables, FL 33134. Serves the following counties in Florida: Brevard, Broward, Charlotte, Collier, Dade, De Soto, Florida Keys, Glades, Hardee, Hendry Highlands, Hillsborough, Indian River, Lee, Manatee, Martin, Monroe, Okeechobee, Osceola, Palm Beach, Pasco, Pinellas, Polk, St. Lucie, and Sarasota.

(11) 700 Twigs Street, Tampa, FL 33602 (post-of-duty). Serves the following counties in Florida: Hillsborough, Pinellas, Polk, and Pasco. (Circuit rider to Manatee and Hendry).

(12) 701 Clematis Street, West Palm Beach, FL 33402 (post-of-duty). Serves the following counties in Florida: Brevard, Glades, Highlands, Indian River, Martin, Okeechobee, Palm Beach, and St. Luce.

(13) 404 James Robertson Parkway, Nashville, TN 37219. Serves Tennessee.

(14) 502 Gay Street, Knoxville, TN 37902 (branch office). Serves the following counties in Tennessee: Anderson, Bledsoe, Blount, Bradley, Campbell, Carter, Claiborne, Clocke, Cumberland, Fentress, Grainger, Greene, Hamblen, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, McMinn, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sevier, Sullivan, Unicoi, Union, and Washington.

(15) 167 North Main Street, Memphis, TN 38103 (branch office). Serves the following counties in Tennessee: Carroll, Chester, Crockett, Dyer, Fayette, Gibson, Hardeman, Haywood, Henderson, Henry, Lake, Lauderdale, McNairy, Madison, Obion, Shelby, Tipton, and Weakley.

(e) *Region V.* Regional Office, 219 South Dearborn Street, Chicago, IL 60604. Has jurisdiction over the following district offices, branch offices, and posts-of-duty:

(1) 219 South Dearborn Street, Chicago, IL 60604. Serves Illinois.

(2) One North, Old State Capital Plaza, Springfield, IL 62701. Serves the following counties in Illinois: Adams, Alexander, Bond, Brown, Calhoun, Cass, Champaign, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Franklin, Fulton, Gallatin, Greene, Hamilton, Hancock, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Logan, McDonough, McLean, Macon, Macoupin, Madison, Marion, Mason, Massac, Menard, Monroe, Montgomery, Morgan, Moultrie, Peoria, Perry, Piatt, Pike, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Sangamon, Schuyler, Scott, Shelby, Tazewell, Union, Vermilion, Wabash, Washington, Wayne, White, Williamson, and Woodford.

(3) 1240 East Ninth Street, Cleveland, OH 44199. Serves the following counties in Ohio: Ashtabula, Carroll, Columbiana, Cuyahoga, Defiance, Erie, Fulton, Geauga, Harrison, Henry, Huron, Jefferson, Lake, Lorain, Lucas, Mahoning, Medina, Ottawa, Portage, Sandusky, Seneca, Stark, Summit, Trumbull, Tuscarawas, Wayne, Williams, and Wood.

(4) 85 Marconi Boulevard, Columbus, OH 43215. Serves the following counties in Ohio: Adams, Allen, Ashland, Athens, Auglaize, Belmont, Brown, Butler, Champaign, Clark, Clermont, Clinton, Coshocton, Crawford, Drake, Delaware, Fairfield, Fayette, Franklin, Gallia, Greene, Guernsey, Hamilton, Hancock, Hardin, Highland, Hocking, Holmes, Jackson, Knox, Lawrence, Licking, Logan, Madison, Marion, Meigs, Mercer, Miami, Monroe, Montgomery, Morgan, Morrow, Muskingum, Noble, Paulding, Perry, Pickaway, Pike, Preble, Putnam, Richland, Ross, Scioto, Shelby, Union, Van Wert, Vinton, Warren, Washington, and Wyandot.

(5) 550 Main Street, Cincinnati, OH 45202 (branch office). Serves the following counties in Ohio: Adams, Brown, Butler, Clermont, Clinton, Hamilton, Highland, Montgomery, Preble, and Warren.

(6) 477 Michigan Avenue, Detroit, MI 48226. Serves Michigan.

(7) 540 W. Kaye Avenue, Marquette, MI 49855 (branch office). Serves the following counties on the Upper Pennisula of Michigan: Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, and Schoolcraft.

(8) 575 North Pennsylvania Street, Indianapolis, IN 46204. Serves Indiana.

(9) 212 East Washington Avenue, Madison, WI 53703. Serves Wisconsin.

(10) 517 East Wisconsin Avenue, Milwaukee, WI 53202 (branch office). Serves the following counties in Wisconsin: Dodge, Fond du Lac, Jefferson, Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Walworth, Washington, Waukesha.

(11) 500 South Barstow Street, Eau Claire, WI 54701 (post-of-duty). Serves the following counties in Wisconsin: Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Douglas, Dunn, Eau Claire, Florence, Forest, Iron, Lincoln, Oneida, Pepin, Pierce, Polk, Price, Rusk, Sawyer, St. Croix, Taylor, Trempealeau, Vilas, and Washburn.

(12) 12 South Sixth Street, Minneapolis, MN 55402. Serves Minnesota.

(f) *Region VI.* Regional Office, 1720 Regal Row, Dallas TX 75235. Has jurisdiction over the following district offices, branch offices, and posts-of-duty:

(1) 1100 Commerce Street, Dallas, TX 75242. Serves the following counties in Texas: Anderson, Archer, Baylor, Bell, Bosque, Bowie, Brown, Callahan, Camp, Cass, Cherokee, Clay, Coleman, Collin, Commanche, Cooke, Corywell, Dallas, Delta, Denton, Eastland, Ellis, Erath, Falls, Fannin, Franklin, Freestone, Grayson, Gregg, Hamilton, Harrison, Henderson, Hill, Hood, Hopkins, Hunt, Jack, Johnson, Kaufman, Lamar, Limestone, McLennan, Marion, Mills, Montague, Morris, Nacogdoches, Navarro, Palo Pinto, Panola, Parker, Rains, Red River, Rockwall, Rusk, Sabine, San Augustine, Shackelford, Shelby, Smith, Somervel, Stephens, Tarrant, Throckmorton, Titus, Upshur, Van Zandt, Wichita, Wilbarger, Wise, Wood, and Young.

(2) 501 West Tenth Street, U.S. Courthouse, Room 527, Fort Worth, TX 76102 (branch office). Serves the following counties in Texas: Archer, Baylor, Brown, Callahan, Clay, Coleman, Comanche, Eastland, Erath, Hood, Jack, Johnson, Mills, Montague, Palo Pinto, Parker, Shackleford, Somervell, Stephens, Tarrant, Throckmorton, Wichita, Wilbarger, Wise, and Young.

(3) 100 South Washington Street, Marshall, TX 75670 (post-of-duty). Serves the following counties in Texas: Bowie, Cass, Gregg, Harrison, Marion, Panola, Rusk, Shelby, Upshur.

(4) 5000 Marbel Avenue, NE., Albuquerque, NM 87110. Serves New Mexico, except the sections of the Navajo Indian Reservation and the Ute Mountain Indian Reservation in New Mexico.

(5) 500 Dallas Street, Houston, TX 77002. Serves the following counties in Texas: Angeline, Austin, Brazoria, Brazos, Burleson, Chambers, Colorado, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jasper, Jefferson, Leon, Liberty, Madison, Matagorda, Milam, Montgomery, Newton, Orange, Polk, Robertson, San Jacinto, Trinity, Tyler, Waller, Walker, Washington, and Warton.

(6) 611 Gaines Street, Little Rock, AR 72201. Serves Arkansas.

(7) 222 East Van Buren Street, Harlingen, TX 78550. Serves the following counties in Texas: Aransas, Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kleberg, Nueces, San Patricio, Starr, Willacy, and Zapata.

(8) 3105 Leopard Street, Corpus Christi, TX 78408 (branch office). Serves the following counties in Texas: Aransas, Brooks, Kleberg, Nueces, and San Patricio.

(9) 1205 Texas Avenue, Lubbock, TX 79401. Serves the following counties in Texas: Andrews, Armstrong, Bailey, Borden, Brewster, Briscoe, Carson, Castro, Childress, Cochran, Coke, Collingsworth, Cottle, Crane, Crosby, Culberson, Dallam, Dawson, Deaf Smith, Dickens, Donley, Ector, El Paso, Fisher, Floyd, Foard, Gaines, Garza, Glascock, Gray, Hale, Hall, Hansford, Hardenman, Hartley, Haskell, Hemphill, Hockley, Howard, Hudspeth, Hutchinson, Jeff Davis, Jones, Kent, King, Knox, Lamb, Lipscomb, Loving, Lubbock, Lynn, Martin, Midland,

Mitchell, Moore, Motley, Nolan, Ochiltree, Oldham, Parmer, Pecos, Potter, Presidio, Randall, Reagan, Reeves, Roberts, Runnels, Scurry, Sherman, Sterling, Stonewall, Swisher, Taylor, Terrell, Terry, Upton, Ward, Wheeler, Winkler, and Yoakum.

(10) 4100 Rio Bravo, El Paso TX 79902 (branch office). Serves the following counties in Texas: Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Loving, Pecos, Presidio, Reeves, and Terrell.

(11) 200 NW. 5th Street, Oklahoma City, OK 73102. Serves Oklahoma.

(12) 616 South Boston Street, Tulsa, OK 74119 (post-of-duty). Serves the following counties in Oklahoma: Adair, Cherokee, Craig, Creek, Delaware, Haskell, La Flore, Latimer, Mayes, McIntosh, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pawnee, Pittsburg, Rogers, Sequoyah, Tulsa, Wagoner, and Washington.

(13) 1001 Howard Avenue, New Orleans, LA 70113. Serves Louisiana.

(14) 500 Fannin Street, Shreveport, LA 71101 (post-of-duty). Serves the following parishes in Louisiana: Bienville, Bossier, Caddo, Caldwell, Catahoula, Clairborne, Concordia, De Soto, East Carroll, Franklin, Grant, Jackson, La Salle, Lincoln, Madison, Moorehouse, Natchitoches, Quachita, Red River, Richland, Sabine, Tensas, Union, Webster, West Carroll, and Winn.

(15) 727 East Durange Street, San Antonio, TX 78206. Serves the following counties in Texas: Atascosa, Bandera, Bastrop, Bee, Bexar, Blanco, Burnet, Caldwell, Calhoun, Comal, Concho, Crockett, De Witt, Dimmit, Edwards, Fayette, Frio, Gillespie, Goliad, Gonzales, Guadalupe, Hays, Irion, Jackson, Karnes, Kendall, Kerr, Kimble, Kinney, La Salle, Lampasas, Lavaca, Lee, Live Oak, Llano, Mason, Maverick, McCulloch, McMullen, Medina, Menard, Real, Refugio, San Saba, Schleicher, Sutton, Tom Green, Travis, Uvalde, Val Verde, Victoria, Webb, Williamson, Wilson, and Zavala.

(16) 300 East Eighth Street, Austin, TX 78701 (post-of-duty). Serves the following counties in Texas: Bastrop, Blanco, Burnet, Caldwell, Fayette, Gillespie, Hays, Lampasas, Lee, Llano, Mason, McCulloch, San Saba, Travis, and Williamson.

(g) Region VII. Regional Office, 911 Walnut Street, Kansas City, MO 64106. Has jurisdiction over the following district offices:

(1) 11150 Grande Avenue, Kansas City, MO 64106. Serves the following counties in Kansas and Missouri: Kansas: Allen, Anderson, Atchison, Bourbon, Brown, Cherokee, Coffey, Crawford, Doniphan, Douglas, Franklin, Jackson, Jefferson, Johnson, Labette, Leavenworth, Linn, Marshall, Miami, Montgomery, Nemaha, Neosho, Osage, Pottawatomie, Shawnee, Wilson, Woodson, and Wyandotte. Missouri: Adair, Andrew, Atchison, Barry, Barton, Bates, Benton, Buchanan, Caldwell, Carroll, Cass, Cedar, Chariton, Christian, Clay, Clinton, Cooper, Dade, Dallas, Daviess, De Kalb, Douglas, Gentry, Greene, Grundy, Harrison, Henry, Hickory, Holt, Howard, Jackson, Jasper, Johnson, Laclede, Lafayette, Lawrence, Linn, Livingston, McDonald, Mercer, Morgan, Newton, Nodaway, Ozark, Pettis, Platte, Polk, Ray, St. Clair, Saline, Stone, Sullivan, Taney, Vernon, Webster, Worth, and Wright.

(2) 373 Collins Road, N.E., Cedar Rapids, IA 52402. Serves the following counties in Iowa: Allamakee, Benton, Black Hawk, Bremer, Buchanan, Cedar, Chickasaw, Clayton, Clinton, Delaware, Des Moines, Dubuque, Fayette, Henry, Howard, Iowa, Jackson, Jefferson, Johnson, Jones, Keokuk, Lee, Linn, Louisa, Muscatine, Scott, Van Buren, Washington, and Winneshiek.

(3) 210 Walnut Street, Des Moines, IA 50309. Serves the following counties in Iowa: Adair, Adams, Appanoose, Audubon, Boone, Buena Vista, Butler, Calhoun, Carroll, Cass, Cerro Gordo, Cherokee, Clarke, Clay, Crawford, Dallas, Davis, Decatur, Dickinson, Emmett, Floyd, Franklin, Fremont, Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Humbolt, Ida, Jasper, Kossuth, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Mononan, Monroe, Montgomery, O'Brien, Osceola, Page, Palo Alto, Pocahontas, Polk, Pottawattomie, Poweshiek, Ringgold, Sac, Shelby, Sioux, Story, Tama, Taylor,

Wapello, Warren, Wayne, Webster, Winnebago, and Woodbury.

(4) Nineteenth and Farnum Streets, Omaha, NE 68102. Serves Nebraska, except the portion of the Pine Ridge Indian Reservation in Nebraska.

(5) One Mercantile Center, St. Louis MO 63101. Serves the following counties in Missouri: Andrain, Bollinger, Boone, Butler, Callaway, Camden, Cape Girardeau, Carter, Clark, Cole, Crawford, Dent, Dunklin, Franklin, Gasconade, Howell, Iron, Jefferson, Knox, Lewis, Lincoln, Macon, Madison, Maries, Marion, Miller, Mississippi, Monroe, Montgomery, Moniteau, New Madrid, Oregon, Osage, Pemiscot, Perry, Phelps, Pike, Pulaski, Putnam, Ralls, Randolph, Reynolds, Ripley, St. Charles, St. Francois, Ste. Genevieve, St. Louis, St. Louis City, Schuyler, Scotland, Scott, Shannon, Shelby, Stoddard, Texas, Warren, Washington, and Wayne.

(6) 110 East Waterman Street, Wichita, KS 67202. Serves the following counties in Kansas: Barber, Barton, Butler, Chase, Chautaugua, Cheyenne, Clark, Clay, Cloud, Commanche, Cowley, Decatur, Dickinson, Edwards, Elk, Ellis, Ellsworth, Finey, Ford, Geary, Gove, Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Harvey, Haskell, Hodgeman, Jewell, Kearny, Kingman, Kiowa, Lane, Lincoln, Logan, Lyon, McPherson, Marion, Meade, Mitchell, Morris, Morton, Ness, Norton, Osborne, Ottawa, Pawnee, Phillips, Pratt, Rawlins, Reno, Republic, Rice, Riley, Rooks, Rush, Russell, Saline, Scott, Sedgwick, Seward, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Sumner, Thomas, Trego, Webaunsee, Wallace, Washington, and Wichita.

(h) *Region VIII.* Regional Office, 1405 Curtis Street, Denver, CO 80202. Has jurisdiction over the following district and branch offices:

(1) 721 Nineteenth Street, Denver, CO 80202. Serves Colorado, except the section of the Navajo Indian Reservation in Colorado.

(2) 100 East B Street, Casper, WY 82602. Serves Wyoming.

(3) 657 Second Avenue, North, Fargo, ND 58108. Serves North Dakota.

(4) 301 South Park Avenue, Helena, Montana 59601. Serves Montana.

(5) 125 South State Street, Salt Lake City, UT 84138. Serves Utah and the portion of the Goshute Indian Reservation in Nevada.

(6) 101 South Main Avenue, Sioux Falls, SD 57102. Serves South Dakota and the portion of the Pine Ridge Indian Reservation in Nebraska.

(7) 515 Ninth Street, Rapid City, SD 57701 (branch office). Serves the following counties in South Dakota: Butte, Custer, Fall River, Lawrence, Meade, Pennington, and Shannon.

(i) *Region IX.* Regional Office, 450 Golden Gate Avenue, San Francisco, CA 94102. Has jurisdiction over the following district offices, branch offices, and posts-of-duty:

(1) 211 Main Street, San Francisco, CA 94105. Serves California, except the counties of Imperial, Inyo, Kern (East Pt.), Lassen, Los Angeles, Modoc, Mono, Orange, Riverside, Santa Barbara, San Bernadino, San Diego, San Luis Obispo, and Ventura.

(2) 1515 Clay Street, Oakland, CA 94612 (post-of-duty). Serves the following counties in California: Alameda, Contra Costa, and Solano.

(3) Fidelity Federal Building, 2700 North Main Street, Santa Ana, CA 92701 (post-of-duty). Serves Orange County in California.

(4) 1229 N Street, Fresno, CA 93712 (branch office). Serves the following counties in California: Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Fresno, Glenn, Kern (west part), Kings, Madera, Mariposa, Merced, Nevada, Placer, Plumas, Sacramento, San Joaquin, San Luis Obispo, Shaster, Sierra, Siskiyou, Stanislaus, Sutter, Tulare, Tuolumne, Tehama, Trinity, Yuba, and Yolo.

(5) 2800 Cottage Way, Sacramento, CA 95825 (post-of-duty). Serves the following counties in California: Amador, Butte, Calaveras, Colusa, Glenn, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Yuba, and Yolo.

(6) 300 Ala Moana, Honolulu, HI 96850. Serves Hawaii and American Samoa.

(7) Pacific Daily News Building, Agana, Guam 96910 (branch office).

Serves Guam and the Trust Territory of the Pacific Islands.

(8) 301 E. Stewart, Las Vegas, NV 89101. Serves Nevada and the California counties of Inyo, Lassen, Modoc, and Mono except the Fort Mohave Indian Reservation, the Duck Valley Indian Reservation, and the Goshute Indian Reservation. Additionally, serves the Fort McDermott Indian Reservation in Oregon.

(9) 50 South Virginia Street, Reno NV 89505 (post-of-duty). Serves the following counties in Nevada and California: Nevada: Carson, Churchill, Douglas, Elko, Eureka, Humboldt, Lander, Lyon, Mineral, Pershing, Warshoe, White Pine, and Storey. California: Lassen, and Modoc.

(10) 350 S. Figueroa Street, Los Angeles, CA 90071. Serves the following counties in California: Kern (East part), Los Angeles, Orange, Santa Barbara, San Bernardino, San Luis Obispo, and Ventura.

(11) 3030 North Central Avenue, Phoenix, AZ 85012. Serves Arizona and the section of the Yuma Indian Reservation in California the section of the Colorado River Indian Reservation in California, the sections of the Fort Mohave Indian Reservation in California and Nevada, and the sections of the Navajo Indian Reservation in Colorado and New Mexico.

(12) 301 West Congress Street, Tucson, AZ 85715 (post-of-duty). Serves the following counties in Arizona: Cochise, Graham, Greenlee, Pima, and Santa Cruz.

(13) 880 Front Street, San Diego, CA 92188. Serves the California counties of Imperial, Riverside, and San Diego, except the Fort Yuma, Colorado River, and Fort Mohave Indian Reservations.

(j) *Region X.* Regional Office, 710 Second Avenue, Seattle, WA 98104. Has jurisdiction over the following district and branch offices:

(1) 915 Second Avenue, Seattle, WA 98174. Serves the following counties in Washington: Chelan, Clallam, Douglas, Grays Harbor, Island, Jefferson, King, Kitsap, Kittitas, Lewis, Mason, Okanogan, Pacific, Pierce, San Juan, Skagit, Snohomish, Thurston, Whatcom, and Yakima.

(2) 1016 West Sixth Avenue, Anchorage, AK 99501. Serves Alaska.

(3) 101 Twelfth Avenue, Fairbanks, AK 99701 (branch office). Serves the Alaska election districts of Barrow-Kobuk, Fairbanks-Yukon, and Yukon-Kuskokwim.

(4) 1005 Main Street, Boise, ID 83701. Serves Idaho with the following exceptions: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone. Serves the Oregon Counties of Baker, Grant, Harney, Malheur, Union and Wallowa, except the section of the Fort McDermitt Indian Reservation in Oregon.

(5) 1220 SW Third Avenue, Portland, OR 97204. Serves Oregon except Baker, Grant, Harney, Malheur, Untion, and Wallowa counties. Serves the Washington counties of Clark, Cowlitz, Klickitat, Skamania, and Wahkiakum.

(6) West 920 Riverside Avenue, Spokane, WA 99210. Serves the following counties in Washington and Idaho: Washington: Adams, Asotin, Benton, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, and Whitman. Idaho: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone.

[44 FR 76757, Dec. 28, 1979, as amended at 45 FR 43388, June 27, 1980; 46 FR 13, Jan. 2, 1981]

§ 101.3-2 Delegations of authority to conduct program activities in field offices.

Pursuant to authority vested in me by the Small Business Act, 72 Stat. 384, as amended, and the Small Business Investment Act of 1958, 72 Stat. 689, as amended, the following authority is hereby delegated to field positions as hereinafter set forth:

PREFACE

The policies, rules, procedures and other requirements, as well as citations to the statutes, governing the programs for which this delegation of authority is issued, are contained in various parts of the Regulations of the Small Business Administration, Chapter I of Title 13 of the Code of Federal Regulations, as amended from time to time in the FEDERAL REGISTER.

PART I—FINANCING PROGRAM

Section A—Loan Approval Authority

1. Business Loans (Small Business Act) (SBAct).

a. To approve or decline direct and immediate participation section 7(a) business loans (except section 7(a)(13) loans) not exceeding the following amounts (SBA share):

	Approve	Decline
(1) Regional Administrator	$350,000	$350,000
(2) Deputy Regional Administrator	350,000	350,000
(3) Assistant Regional Administrator/F&I	350,000	350,000
(4) District Director	350,000	350,000
(5) Deputy District Director	350,000	350,000
(6) Assistant District Director/F&I	350,000	350,000
(7) Chief, Financing D/O	350,000	350,000
(8) Financial Management Assistance Officer-Minneapolis, MN D/O	350,000	350,000
(9) Supervisory Loan Specialist, Financing D/O	250,000	350,000
(10) Senior Loan Specialist, Financing, D/O, Region IV only	250,000	350,000
(11) Branch Manager, Buffalo, Elmira, Corpus Christi and Springfield, MO	350,000	350,000
(12) Branch Manager, except Fairbanks, Buffalo, Corpus Christi, Elmira, and Springfield, MO	250,000	350,000
(13) Assistant Branch Manager/F&I, Gulfport, Milwaukee, Springfield, IL, and Sacramento B.O.'s only	250,000	350,000
(14) Branch Manager, Fairbanks B/O only	150,000	150,000
(15) Assistant Branch Manager, F&I, Corpus Christi B.O. only	350,000	350,000

b. *Guaranty loans.* 7(a) business loans (except section 7(a)(13) loans):

	Approve	Decline
(1) Regional Administrator	$750,000	$750,000
(2) Deputy Regional Administrator	750,000	750,000
(3) Assistant Regional Administrator/F&I	750,000	750,000
(4) District Director	750,000	750,000
(5) Deputy District Director	750,000	750,000
(6) Assistant District Director/F&I	750,000	750,000
(7) Chief, Financing Division, D/O	750,000	750,000
(8) Financial/Management Assistance Officer, Minneapolis, MN, D/O)	500,000	750,000
(9) Supervisory Loan Specialist, Financing, D/O	250,000	750,000
(10) Senior Loan Specialist, Financing, D/O, Region IV only	250,000	750,000
(11) Branch Manager, Corpus Christi, Milwaukee, Springfield, IL, Springfield, MO, and Sacramento	500,000	750,000
(12) Branch Manager, Buffalo and Elmira	350,000	750,000
(13) Branch Manager, except Fairbanks, Buffalo, Corpus Christi, Elmira, Milwaukee, Springfield, IL, and Springfield, MO	250,000	750,000
(14) Branch Manager, Fairbanks D/O	150,000	150,000
(15) Assistant Branch Manager/F&I, Milwaukee, Springfield, IL, and Sacramento B.O's	350,000	750,000
(16) Assistant Branch Manager for F&I, Gulfport, B/O	250,000	750,000
(17) Assistant Branch Manager/F&I, Corpus Christi B.O. only	500,000	750,000

Section B—Other Financing Authority

For all types of loans contained in Section A above, (except section 7(a)(13) loans)

1. Loan Participation Agreements. To enter into individual and blanket loan participation agreements with bank lenders and savings and loan associations:

a. Regional Administrator.

b. Deputy Regional Administrator.

c. Assistant Regional Administrator/F&I.

d. District Director

e. Deputy District Director

f. Assistant District Director for F&I.

g. Chief, Financing D/O.

h. Financial/Management Assistance Officer—Minneapolis, MN D/O.

i. Branch Manager.

j. Assistant Branch Manager for F&I, Gulfport, Corpus Christi, Milwaukee, and Springfield, Illinois B.O.'s only.

2. Loan Authorization:

a. To execute written authorizations:

(1) Regional Administrator.

(2) Deputy Regional Administrator.

(3) Assistant Regional Administrator/F&I.

(4) District Director.

(5) Deputy District Director.

(6) Assistant District Director for F&I.

(7) Chief, Financing D/O.

(8) Financial/Management Assistance Officer, Minneapolis, MN, D/O.

(9) Supervisory Loan Specialist Financing, D/O.

(10) Senior Loan Specialist, Financing, D/O, Region IV only.

(11) Branch Manager.

(12) Assistant Branch Manager/F&I, Gulfport, Corpus Christi, Milwaukee, Springfield, IL, and Sacramento B.O.'s only.

b. To cancel, reinstate, modify, and amend authorizations:

(1) Regional Administrator.

(2) Deputy Regional Administrator.

(3) Assistant Regional Administrator/F&I.

(4) District Director.

(5) Deputy District Director.

(6) Assistant District Director for F&I.

(7) Chief, Financing, D/O (on fully undisbursed loans).

(8) Financial/Management Assistance Officer, Minneapolis, MN, D/O (on fully undisbursed loans).

(9) Supervisory Loan Specialist, Financing, D/O (on fully undisbursed loans).

(10) Senior Loan Specialist, Financing, D/O (on fully undisbursed loans), Region IV only.

(11) Branch Manager.

(12) Assistant Branch Manager/ F&I, Gulfport, Corpus Christi, Milwaukee, Springfield, Ill., and Sacramento B.O.'s only.

3. Disbursement Period Extension. To extend disbursement periods:

a. Without limitations:

(1) Regional Administrator.

(2) Deputy Regional Administrator.

(3) Assistant Regional Administrator/ F&I.

(4) District Director.

(5) Deputy District Director.

(6) Assistant District Director for F&I.

(7) Chief, Financing, D/O (on fully undisbursed loans).

(8) Financial/Management Assistance Officer, Minneapolis, MN D/O (on fully undisbursed loans).

(9) Branch Manager.

(10) Assistant Branch Manager/F&I, Gulfport, Corpus Christi, Milwaukee, and Sacramento B.O.'s.

b. For a cumulative total not to exceed six (6) months:

(1) Supervisory Loan Specialist, Financing D/O (on fully undisbursed loans).

(2) Senior Loan Specialist, Financing, D/O (on fully undisbursed loans), Region IV only.

4. Service Charges: To approve service charges by participating lenders not to exceed two (2) percent per annum on the outstanding principal balance of construction loans and loans involving accounts receivable and inventory financing:

a. Regional Administrator.

b. Deputy Regional Administrator.

c. Assistant Regional Administrator/F&I.

d. District Director.

e. Deputy District Director.

f. Assistant District Director for F&I.

g. Chief, Financing, D/O (on fully undisbursed loans).

h. Financial/Management Assistance Officer, Minneapolis, MN D/O (on fully undisbursed loans).

i. Supervisory Loan Specialist, D/O (on fully undisbursed loans).

j. Senior Loan Specialist, Financing, D/O (on fully undisbursed loans), Region IV only.

k. Assistant Branch Manager/F&I, Gulfport, Corpus Christi, Milwaukee, Springfield, Ill., and Sacramento B.O.'s only.

l. Assistant Branch Manager for F&I, Gulfport, Corpus Christi, Milwaukee and Springfield, Illinois B/O's only.

Section C: Section 7(a)(13) Loans Approval Authority

1. Loans to a State Development Company (SBI Act). To approve or decline loans to a state development company not exceeding the following amounts (SBA share):

a. Regional Administrator	Unlimited
b. Deputy Regional Administrator	do
With concurrence in at least one prior recommendation:	
c. Assistant Regional Administrator/F&I	$750,000
d. District Director	750,000
e. Deputy District Director	750,000
f. Assistant District Director for F&I	750,000
g. Chief, Financing, D/O	750,000
h. Financial/Management Assistance Officer, Minneapolis, MN, D/O	750,000

2. Loans to a Local Development Company (SBI Act): To approve or decline loans to a local development company not exceeding the following amounts (SBA share) for each small business concern being assisted, within the project cost limitations shown below:

NOTE: Project cost applies to the cumulative SBA assistance to a small business concern and its affiliates and not to the additional assistance on which the action is being taken.

a. Unlimited project cost:

(1) Regional Administration........... $750,000

b. Overall project cost not exceeding $1,500,000:

(2) Deputy RA (Region VII)............. 750,000

(3) ARA/F&I............. 750,000

(4) District Director............. 750,000

(5) Deputy District Director............. 750,000

(6) ADA/F&I............. 750,000

(7) Branch Manager............. 500,000

(8) Assistant Branch Manager/F&I, Corpus Christi B.O. only............. 500,000

c. Overall project cost not exceeding $750,000:

(9) Chief, Financing D/O............. 750,000

(10) Financial/Management Assistant Officer, Minneapolis, MN D/O............. 500,000

(11) Assistant Branch Manager/ F&I, Sacramento B.O............. 500,000

PART II—[RESERVED]

PART III—OTHER FINANCIAL AND GUARANTEE PROGRAMS

Section A—Section 503 Debenture Guaranty Approval Authority (Small Business Investment Act)

1. Section 503 Certified Development Company Debenture Guaranty Approval Authority (SBI Act). To approve or decline section 503 guarantees of debentures issued by certified development companies not ex-

ceeding the following amount (SBA share) for each small business being assisted, within the project cost limitations shown below:

NOTE: Project cost as used in this part, means the sum of all financial assistance to the small business concern and its affiliates construction project under consideration, not just that portion on which the 503 debenture guarantee action is being taken.

a. Unlimited project cost:	
(1) Regional Administrator	$750,000
b. Overall project cost not exceeding $1,500,000:	
(1) Deputy RA (Region VII)	750,000
(2) ARA/F&I	750,000
(3) District Director	750,000
(4) Deputy District Director	750,000
(5) ADA/F&I	750,000
(6) Branch Managers	500,000
c. Overall project cost not exceeding $1,000,000:	
(1) Chief, Financing D/O	750,000
(2) Assistant Branch Managers/ F&I	500,000

Section B—Other 503 Authority:

1. Participation Agreements. To decline to enter into participation agreements with lenders:

a. Regional Administrator.
b. Deputy Regional Administrator.
c. Assistant Regional Administrator/F&I.
d. District Director.
e. Deputy District Director.
f. Assistant District Director for F&I.

2. Loan Authorizations:

a. To execute written loan authorizations:
(1) Regional Administrator.
(2) Deputy Regional Administrator.
(3) Assistant Regional Administrator/ F&I.
(4) District Director.
(5) Deputy District Director.
(6) Assistant District Director for F&I.
(7) Chief, Financing, D/O.
(8) Financial/Management Assistance Officer—Minneapolis, MN D/O.
(9) Branch Managers.
(10) Assistant Branch Managers for F&I.

b. To cancel, reinstate, modify, and amend authorizations:
(1) Regional Administrator.
(2) Deputy Regional Administrator.
(3) Assistant Regional Administrator/ F&I.
(4) District Director.
(5) Deputy District Director.
(6) Assistant District Director/F&I.
(7) Chief, Financing, D/O (before initial disbursement).
(8) Financial/Management Assistance Officer—Minneapolis, MN D/O (before initial disbursement).
(9) Branch Managers.
(10) Assistant Branch Managers for F&I.

3. Disbursement Period Extension. To extend disbursement periods:

a. Regional Administrator.
b. Deputy Regional Administrator.
c. Assistant Regional Administrator/F&I.
d. District Director.
e. Deputy District Director.
f. Assistant District Director/F&I.
g. Chief, CED, D/O (on wholly undisbursed loans).
h. Chief, Financing, D/O (on wholly undisbursed loans).
i. Financial/Management Assistance Officer—Minneapolis, MN D/O (on wholly undisbursed loans).
j. Branch Managers.
k. Assistant Branch Managers for F&I

Section C—Surety Guarantee

1. To guarantee sureties against portion of losses resulting from the breach of bid payment, or performance bonds on contracts, not to exceed the following amount.

a. Regional Administrator	1,250,000
b. Deputy Regional Administrator	1,250,000
c. Assistant Regional Administrator/F&I, except Atlanta and Seattle R.O.'s	750,000
d. Assistant Regional Administrator/F&I, Atlanta and Seattle R.O.'s only	1,250,000
e. Supervisory Surety Bond Guarantee Specialist, Philadelphia R.O. only	750,000
f. Surety Bond Coordinator, Atlanta and Seattle R.O.'s only	750,000
g. Senior Surety Bond Guarantee Specialist	500,000
h. Surety Bond Officer	500,000

Section D—EDA Loan Authority

1. EDA Loan Disbursement Authority. To disburse EDA loans, directed by EDA:

a. Regional Administrator.
b. Deputy Regional Administrator.
c. Assistant Regional Administrator/F&I.
d. Regional Counsel.
e. District Director.
f. Deputy District Director.
g. Assistant District Director/F&I.
h. Chief, FD, D/O.
i. District Counsel.
j. Branch Manager, Corpus Christi B.O.
k. Assistant Branch Manager/F&I, Corpus Christi B.O.
l. Branch Counsel, Corpus Christi B.O.

PART IV—PORTFOLIO MANAGEMENT (PM) PROGAM

Section A—Portfolio Management, Servicing, Collection, and Liquidation Authority

1. To take all necessary actions in connection with the administration, servicing, collection, and liquidation of all SBA loans and guarantees, EDA loans in liquidation when

and as authorized by EDA, lease guarantees, 8(a) matters accepted for liquidation, *exclusive of matters in litigation*, to approve loan increases during a period of one year after final disbursement, not to exceed the lesser of $20,000 or 20% of the original loan amount, and to do and perform, and to assent to the doing and performance of, all and every act and thing requisite and proper to effectuate these granted powers.

EXCEPT:

a. *To compromise or sell* any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereof;

b. *To deny liability* of the Small Business Administration under the terms of a participation or guaranty agreement or a lease guarantee;

c. *To authorize suit* for recovery from a participating institution under any alleged violation of a participation or guaranty agreement; or

d. *To accept a lump sum settlement or to purchase property* under the lease guarantee:

(1) Regional Administrator.

(2) Deputy Regional Administrator.

(3) Assistant Regional Administrator/F&I.

(4) District Director.

(5) Deputy District Director.

(6) Assistant District Director/F&I.

(7) Branch Manager (full services branches only).

(8) Chief or Supervisory Loan Specialist, Portfolio Management, D/O.

(9) Chief or Supervisory Loan Specialist, Liquidation Section, D/O.

(10) Senior Loan Specialist, Portfolio Management or Liquidation Section, D/O, Region IV only.

(11) Financial/Management Assistance Officer—Minneapolis, MN, D/O.

(12) Assistant Branch Manager/F&I, Gulfport, Corpus Christi, Milwaukee, Springfield, Ill., and Sacramento B.O.'s only.

2. To take all necessary actions in connection with the administration, servicing, collection, and liquidation of all SBA loans and guarantees, EDA loans in liquidation when and as authorized by EDA, lease guarantees, 8(a) matters acepted for liquidation, *exclusive of matters in litigation*, to approve loan increases during a period of one year after final disbursement, not to exceed the lesser of $20,000 or 20% of the original loan amount, and to do and perform, and to assent to the doing and performance of, all and every act and thing requisite and proper to effectuate these granted powers.

EXCEPT:

a. *To compromise or sell* any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon;

b. *To deny liability* of the Small Business Administration under the terms of a participation or guaranty agreement or a lease guarantee;

c. *To initiate suit* for recovery from a participating institution under any alleged violation of a participation or guaranty;

d. *To authorize the liquidation of a loan* (except Disaster Home Loans) or to cancel authority to liquidate; or

e. *To accept a lump sum settlement or to purchase property* under the lease guaranty:

(1) Branch Manager (limited servicing branches).

(2) Chief, Portfolio Management B/O (full servicing branches).

(3) Supervisory Loan Specialist, Portfolio Management, B/O, (full servicing branches).

(4) Supervisory loan specialist, disaster home loans (disaster home loan units only).

3. Other Portfolio Management Authority

a. To take *only* the following actions on loans in a current status:

(1) Approve editorial modifications in loan authorizations;

(2) Extend disbursement periods on partially disbursed loans;

(3) Release of cash surrender value or dividends to pay premiums due on assigned policy;

(4) Extend initial principal payment dates or adjust interest payment dates;

(5) Release of equipment (or hazard insurance checks) where the total value being released does not exceed $500.

a. Loan Specialist, Portfolio Management, D/O, or B/O.

b. Loan Specialist, Liquidation Section, D/O or B/O.

PART V—CLAIMS REVIEW COMMITTEE

Section A—Authority to Compromise Claims

1. District Claims Review Committee. This committee shall consist of three incumbents (or those officially acting in their behalf) in the following order of position classification. The first member available in this order shall serve as chairperson.

Liquidation Chief (or liquidation supervisor).

PM Chief (or PM supervisor).

District Counsel.

FD Chief (or FD supervisor).

Financial/Management Asst. Officer, Minneapolis, MN, D/O.

However, the District Director may, at this option, establish an alternative committee membership consisting of the Assistant District Director for Finance and Investment, acting as chairperson, District Counsel and the Assistant District Director for Management Assistance or those officially acting in their behalf. Authority is delegated to take final action on:

a. Claims not in excess of $100,000 (excluding interest) upon *majority* vote of the Committee.

b. Claims not in excess of $150,000 (excluding interest) upon *unanimous* vote of the Committee.

c. Claims in excess of $150,000 (excluding interest) when the amount offered represents the full principal balance due thereby forgiving only the interest upon *unanimous* vote of the Committee.

d. Settlement offers on claims of any size may be declined upon majority vote of the Committee.

2. Regional Claims Review Committee. This committee shall consist of the Assistant Regional Administrator for F&I, serving as chairperson, the Assistant Regional Administrator for Management Assistance, and the Regional Counsel or those officially acting in their behalf. Authority is delegated to take final action on:

a. Claims not in excess of $200,000 (excluding interest) upon *majority* vote of the Committee.

b. Claims in excess of $200,000 but not exceeding $300,000 (excluding interest) upon *unanimous* vote of the Committee.

c. Settlement offers on claims of any size may be declined upon majority vote of the Committee.

PART VI—PROCUREMENT ASSISTANCE PROGRAM (PA)

Section A—Certification of Competency Approval Authority

1. To approve applications for a Certificate of Competency (COC) received from small business concerns located within the region's geographic jurisdiction, subject to the following monetary limitations:

a. Regional Administrator	$5,000,000
b. Deputy Regional Administrator	2,000,000
c. Assistant Regional Administrator/PA	2,000,000
d. COC Specialist	250,000

2. To deny an application for a Certificate of Competency (COC) received from small business concerns located within the region's geographic jurisdiction, subject to the following monetary limitations:

a. Regional Administrator	Unlimited
b. Deputy Regional Administrator	Unlimited
c. Assistant Regional Administrator/PA	Unlimited
d. COC Specialist	$250,000

PART VII—MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT PROGRAM (MSB-COD)

Section A. Contract Certificate of Appointment Authority

No agency field office personnel may purchase goods or services or enter into contracts without a certificate of appointment specific to that individual issued by the Internal Procurement Executive. Regional Administrators, as heads of procurement activities, are exempt from this requirement for a certificate of appointment.

Section B. Section 7j Agreements Authority

1. Administration and Management of 7j Agreements. To take all necessary actions in connection with the administration and management of agreements awarded under the authority granted in Section 7(j) of the Small Business Act, as amended (formerly under Section 406 of the Economic Opportunity Act of 1964) except the awarding, changing, amending or terminating of the agreements which are actions subject to the contracting authority in Section A, Contract Certificate of Appointment Authority.

a. Regional Administrator

b. Deputy Regional Administrator

c. Assistant Regional Administrator for Minority Small Business and Capitol Ownership Development (MSB-COD)

d. Chief, Business Development, Regional Office. Reg. VII

e. District Director

f. Deputy District Director

g. Assistant District Director for MSB/COD

h. Financial Management Assistance Officer, Minneapolis MN, D/O

Section C. Section 8(a)(1)(A) Contracting Authority (SBAct)

1. To enter into the contracts on behalf of the Small Business Administration with the United States Government and any department, agency, or officer thereof having procurement powers, obligating the Small Business Administration to furnish articles, equipment, supplies, services or materials to the Government or to perform construction work for the Government subject to the following:

Each individual who is warranted to purchase goods or services or enter into contracts has dollar limit inherent in the certificate of appointment. That certificate of appointment limit determines the amount limit that person may procure. Regional Administrators and the Washington District Director, as heads of procurement activities, are exempt from this requirement for a certificate of appointment.

2. Subcontracting to arrange for the performance of such procurement contracts as stated in paragraph 1 above by negotiating or otherwise letting subcontracts to socially and economically disadvantage small business concerns for the construction work, services or the manufacture, supply or assembly of such articles, equipment, supplies or materials or parts thereof, or services or processing in connection therewith or such management services as may be necessary to enable the Small Business Administration to perform such contracts, subject to the following:

Each individual who has a certificate of appointment to purchase goods or services or enter into contracts has a dollar limit inherent in the certificate of appointment. That certificate of appointment determines the amount that person may procure. Regional Administrators and the Washington District Director have no dollar limit under this section.

3. To certify to any Officer of the Government having procurement powers that the Small Business Administration is competent and responsible to perform any specific Government procurement contract to be let by any such officer, subject to following:

Each individual who has a certificate of appointment to purchase goods or services or enter into contracts has a dollar limit inherent in the certificate of appointment. That certificate of appointment limit determines the amount that person may procure. Regional Administrators and the Washington District Director have no dollar limit under this section.

PART VIII—LEGAL SERVICES

Section A—Authority To Conduct Litigation Activities

1. To conduct all litigation activities, including SBIC and Economic Development Administration matters, as assigned, and to take all action necessary in connection with matters in litigation; and to do and perform and to assent to the doing and performance of, all and every act and thing requisite and proper to effectuate the granted powers.

Except:

a. *To compromise or sell* any primary obligation or other evidence of indebtedness owed to the Agency a sum less than the total amount due thereon;

b. *To deny liability* of the Small Business Administration under the terms of a participation or guaranty agreement (including lease guarantees); or

c. *To authorize suit* for recovery from a participating institution under any alleged violation of a participation or guaranty agreement; or

d. *To accept a lump sum settlement or to purchase property* under the lease guarantee:

(1) Regional Administrator.
(2) Deputy Regional Administrator.
(3) Regional Counsel.
(4) Attorney, Regional Office.
(5) District Counsel.
(6) Attorney, District Office.
(7) Branch Counsel.
(8) Attorney, Branch Office.

Section B—Loan Closing Authority

1. To close and disburse approved SBA loans and to close EDA loans, as authorized:

a. Regional Administrator.
b. Deputy Regional Administrator.
c. Regional Counsel.
d. Attorney, Regional Office.
e. District Counsel.
f. Attorney, District Office.
g. Branch Counsel.
h. Attorney, Branch Office.

2. To approve, when requested, in advance of disbursements, conformed copies of notes and other closing documents; and certify to the participating bank that such documents are in compliance with the participation authorization:

a. Regional Administrator.
b. Deputy Regional Administrator.
c. Regional Counsel.
d. Attorney, Regional Office.
e. District Counsel.
f. Attorney, District Office.
g. Branch Counsel.
h. Attorney, Branch Office.

3. To approve or disapprove fees charged by borrowers' counsel:

a. Regional Administrator.
b. Deputy Regional Administrator.
c. Regional Counsel.
d. Attorney, Regional Office.
e. District Director.
f. Deputy District Director.
g. District Counsel.
h. Attorney, District Office.
i. Branch Manager.
j. Branch Counsel.
k. Attorney, Branch Office.

Section C—Authority to Contact IRS

1. To request and receive address information from IRS records for purpose of collection and compromise of SBA Federal claims. This information will be used only by Agency employees directly engaged in and solely for their use in preparation for any administrative or judicial proceeding pertaining to the collection or compromise of a Federal claim in accordance with the provisions of Section 3 of the Federal Claims:

Collection Act of 1968.

a. Regional Administrator.
b. Deputy Regional Administrator.
c. Regional Counsel.
d. District Director.

e. Deputy District Director.

f. District Counsel.

PART IX—ELIGIBILITY AND SIZE DETERMINATIONS

Section A—Eligibility Determinations

1. Eligibility Determination Authority. In accordance with Small Business Administration standards policies, to determine eligibility of applicants for assistance under *any program of* the Agency: *EXCEPT the SBIC program.*

a. Regional Administrator.

b. Deputy Regional Administrator

c. All officials having the authority and assigned responsibility to take final action on the assistance requested.

Section B—Size Determinations

1. Size Determination Authority. In accordance with Small Business Administration's Small Business Size Standards Regulations, to make initial size determinations of applicants for assistance under *any* program of the Agency:

a. Regional Administrator.

b. Deputy Regional Administrator.

c. All other officials having authority and assigned responsibility to take final action on the assistance requested, *EXCEPT* the SBIC program and Government procurement and sales activities.

2. Size Determinations for Government Procurement and Sales. In accordance with Small Business Administration's Small Business Size Standards Regulations, to make size determinations for government procurement and sales activities.

a. Regional Administrator.

b. Deputy Regional Administrator.

c. Assistant Regional Administrator/P&TA, except Reg. X.

d. Assistant Regional Administrator/ME&PA, Reg. X only.

e. Chief, Procurement and Technical Assistance, Reg. II only.

PART X—ADMINISTRATIVE

1. Authority to purchase, rent, or contract for equipment, services and supplies for the agency in amounts not to be exceeded. No agency field office personnel may purchase goods or services or enter into contracts without a certificate of appointment specific to that individual issued by the Internal Procurement Executive. Regional Administrators as heads of contracting activities are exempt from this requirement for a certificate of appointment.

a. Purchase Reproductions of Loan Documents. To purchase reproductions of loan documents, chargeable to the revolving fund, requested by U.S. Attorneys in foreclosure cases.

b. Office Supplies and Equipment. To purchase office supplies and equipment and rent regular office equipment and furnishings; contract for repair and maintenance of equipment and furnishings; contract for printing (Government sources only); contract for services required in setting up and dismantling and moving SBA exhibits; and issue Government bills of lading pursuant to Chapter 4 of Title 41, United States Code, as amended, subject to the limitations contained in section 257 (a) and (b) of the Chapter.

c. Rental of Motor Vehicles. To rent motor vehicles when not furnished by this Administration.

d. Rental of Conference Space. To rent temporarily SBA conference space located within the respective geographical jurisdictions.

e. Contract for Services. To contract for services for the agency pursuant to Chapter 4 of Title 41, United States Code, subject to the limitations contained in section 257 (a) and (b) of that Chapter. Each individual who has a certificate of appointment to purchase goods or services or enter into contract has a dollar limit inherent in the certificate of appointment. The certificate of appointment limit determines the amount that person may procure. Regional Administrators are limited to $25,000 on open market and up to the maximum order limitation (MOL) on Federal Supply Schedule under this section.

2. Use of Seal of the Small Business Administration. To certify true copies of any books, records, papers, or other documents on file with the Small Business Administration; to certify extracts from such material; to certify the nonexistence of records on files; and to cause the Seal of the Small Business Administration to be affixed to all such certification.

a. Regional Administrators.

b. District Directors.

c. Branch Managers.

PART XI—REDELEGATION AUTHORITY

Section A—Redelegation

1. The authority delegated herein may not be redelegated.

2. The authority delegated herein may be exercised by any SBA employee designated as acting in a position designated herein, except that procurement authority requiring a certificate of appointment does not reside in a person acting in a designated position unless that acting individual also holds a certificate of appointment. Procurement certificate of appointments are to individuals, not positions.

3. Regional Administrators, Deputy Regional Administrators, District Directors, and Branch Managers may withhold or

limit authorities delegated to those positions prescribed in this document for a period not to exceed six months. Information relating to those temporary exceptions will be maintained and available for examination in their respective field offices.

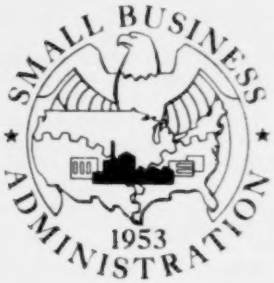
[47 FR 2305, Jan. 15, 1982]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 101.3-2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 101.4 SBA forms for public use.

SBA forms used by the public when applying for or obtaining SBA assistance or when providing services for SBA are available in all field offices. See § 101.3-1.

§ 101.5 Seal.



The Administrator, Assistant Administrator for Administration, Inspector General, Regional and District Directors, and Branch Managers are authorized to certify and authenticate as true, originals and copies of any books, records, papers, or other documents on file within the Small Business Administration; to certify and authenticate as true, originals, and copies of extracts from such material; to certify and authenticate as true, originals and copies of extracts from such material; to certify the nonexistence of records on file; and to cause the Seal of the Small Business Administration to be affixed to all such certifications for all purposes, including the purposes authorized by 28 U.S.C. 1733. This authority applies to any books, records, papers, or other documents on file within their respective jurisdictions.

[47 FR 2074, Jan. 14, 1982, as amended at 51 FR 14979, Apr. 22, 1986]

§ 101.6 Litigation.

Service of process in any suit instituted against SBA may be accomplished in accordance with the provisions of Rule 4 of the Federal Rules of Civil Procedure or in accordance with the provisions of section 2410 of Title 28, United States Code. All litigation instituted by or against SBA will be prosecuted or defended by the Attorney General through the United States Attorney for the Federal District in which the matter arises.

§ 101.7 Employment of fee counsel.

(a) *Business loans.* SBA employs attorneys on a full-time basis in most of its field offices and these employees usually perform all the legal services requested on behalf of SBA in the making of business loans. The loan applicant or borrower usually employs his own attorney to represent his interests, and this attorney is selected and paid by the applicant or borrower, except that the reasonableness of the fee is reviewed by SBA. On occasions, such as where the volume of activity has not been sufficient to require a full-time employee, or the area is too remote to economically use the services of a full-time employee, SBA has hired fee counsel to represent it in business loans.

(b) *Disaster loans.* In disaster loans, as defined in Part 123 of this chapter, SBA may contract for the services of fee counsel because the disaster presents an emergency and a volume of activity that cannot be promptly and economically serviced by the available full-time or temporary employees.

(c) *Compensation.* All work performed at the request of, and for, SBA is performed in compliance with its regulations and instructions, and is compensated for at an hourly rate determined by SBA and established in the contract between SBA and the fee counsel. The contract may be terminated upon written notice by either party.

(d) *Duties.* The fee counsel acts under the general supervision of the General Counsel through field counsel, and takes such action as is legally requisite and necessary for the making of loans under the provisions of the

Small Business Act. In the event that fee counsel acts contrary to, or fails to act in accordance with SBA's regulations and instructions, the loan may be reassigned either to another fee counsel or to a full-time employee. In the performance of functions as an attorney for SBA the highest standards of professional conduct are requisite and proper. All matters of confidence proper to the attorney-client relationship are respected by fee counsel.

§ 101.8 Investigations: Small Business Act.

§ 101.8-1 Application of the rules of this part.

The rules of this part apply only to investigations conducted under the Small Business Act (15 U.S.C. 631 *et seq.*). They do not apply to adjudicative or rule-making proceedings or investigations under the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*).

§ 101.8-2 Scope of rules.

Where, from complaints received from members of the public examination of filings and reports made with the Agency, communications from Federal or State agencies, or otherwise, it appears that there may be a violation of the Small Business Act, as amended, or the rules and regulations thereunder, or of any order issued under the Act, or where it appears that there is a likelihood that a violation has been or is about to be committed, the Administrator or the Assistant Administrator for Administration or the Director of the Office of Audits and Investigations may order a formal investigation if it is deemed necessary.

§ 101.8-3 Authority of officer conducting investigation.

The person or persons designated by the Order of Formal Investigation shall have all the authority to conduct the inquiry as set forth in section 5(b)(11) of the Act, 15 U.S.C. 634(b)(11), including the authority to administer oaths and affirmations, subpoena witnesses, compel their attendance to take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry.

§ 101.8-4 Non-public formal investigation proceedings.

Unless otherwise ordered by the Administration, all formal investigative proceedings shall be non-public and the reports thereon are for the use of the Administration only.

§ 101.8-5 Right to copy of data or transcript of testimony.

Transcripts, if any, of formal investigative proceedings shall be recorded by the official reporter, or by any other person or means designated by the officer conducting the investigation. A person who has submitted data or evidence in such investigations shall be entitled to retain or procure a copy of his data or a transcript of his testimony on payment of the prescribed fees; provided, however, in the case of non-public investigations such person shall file a written request stating the reason for desiring to procure such copy or transcript. The Administration may in non-public investigatory proceeding for good cause deny such request. In the latter event, such person, upon proper identification, shall have the right to inspect the official transcript of his testimony.

§ 101.8-6 Counsel for witnesses in investigations.

Any person compelled to appear in person at an investigation designated in § 101.8-2 may be accompanied, represented and advised by counsel, but such counsel may not represent any other witness or any person being investigated, unless permitted in the discretion of the officer conducting the investigation or the Administration upon being satisfied that there is no conflict of interest in such representation and that the presence of identical counsel for other witnesses or persons being investigated would not tend to hinder the course of the investigation.

§ 101.8-7 Suspension or disbarment of counsel.

The Administrator for good cause shown may, in accordance with the procedures set forth in Part 104 of this chapter, reprimand, suspend or disbar counsel from practice before the Administration because of contemptuous conduct, dilatory tactics or other improper conduct in the course of an investigation.

[42 FR 65139, Dec. 30, 1977]

§ 101.8-8 Information obtained in investigations.

Information or documents obtained by the Administration in the course of any investigation shall, unless made a matter of public record, be deemed confidential. Officers and employees are hereby prohibited from making such confidential information or documents or any other non-public records of the Administration available to anyone other than an officer or employee of the Administration, unless the Administration authorizes the disclosure of such information or the production of such documents as not being contrary to the public interest. Any officer or employee who is served with a subpoena requiring the disclosure of such information or the production of such documents shall appear in court and, unless the authorization described in the preceding sentence shall have been given, shall respectfully decline to disclose the information or produce the documents called for, basing his refusal upon this section. Any officer or employee who is served with a subpoena shall promptly advise the Assistant Administrator for Congressional and Public Affairs and the Office of General Counsel of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making available such information or documents.

§ 101.8-9 Service of subpoena.

(a) Service of subpoenas issued in an investigative proceeding may be effected as follows:

(1) *By registered mail.* A copy of the subpoena shall be addressed to the person, partnership, corporation, or unincorporated association to be served at his or its residence or principal office or place of business, registered, and mailed; or

(2) *By delivery to any individual.* A copy of the subpoena may be delivered to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation or unincorporated association to be served; or

(3) *By delivery to an address.* A copy of the subpoena may be left at the principal office or place of business of the person, partnership, corporation or unincorporated association, or it may be left at the residence of the person or a member of the partnership or of an officer or director of the corporation or unincorporated association to be served.

(b) *Proof of service.* (1) When service is by registered mail, it is complete upon delivery of the document by the Post Office.

(2) The return Post Office receipt for a document registered and mailed, or the verified return of certificate by the person serving the document by personal delivery, setting forth the manner of said service, shall be proof of the service of the document.

§ 101.8-10 Witness fees.

Witnesses in an investigative proceeding shall be paid the same fees and mileage as are paid witnesses in the courts of the United States.

§ 101.9 Public participation in rulemaking.

SBA is governed as a matter of policy by the public participation provisions of the Administrative Procedure Act, 5 U.S.C. 553, notwithstanding the exemptions given by such section 553 for matters relating to agency management or personnel, or to public property, loans, grants, benefits, or contracts. Where, as provided by 5 U.S.C. 553, it is determined that such public participation procedures would be impracticable, unnecessary, or contrary to the public interest, a specific finding to this effect shall be published with the rules or regulations in question. Such exceptions from public participation procedures are not to be favored and will be used sparingly, as for example, in emergencies and in instances where public participation would be useless or wasteful because proposed regulations, or amendments thereto, cover minor technical matters. In connection with any notice of proposed rulemaking, written material or suggestions submitted will be available for public inspection during regular business hours at the office indicated in such notice.

PART 102—DISCLOSURE OF INFORMATION AND PRIVACY ACT OF 1974

Subpart A—Disclosure of Information

Sec.
102.1 Purpose and policy.
102.2 Scope.
102.3 Information and records available to the public and exempt from disclosure.
102.4 Public access to information and records.
102.5 Administrative appeal of refusal to disclose.
102.6 Fees.
102.7 Appearances and testimony by SBA officers and employees.

Subpart B—Privacy Act of 1974

102.20 Purpose, policy, and scope.
102.21 Definitions.
102.22 Officials responsible for Privacy Act of 1974.

DISCLOSURES

102.23 General conditions of disclosure.
102.24 Information compiled for civil action.
102.25 Disclosure of record to person other than the individual to whom it pertains.
102.26 Accounting of disclosures.

ACCESS AND AMENDMENT

102.27 Requests by individuals to gain access to records.
102.28 Appeal to Privacy Act Officer.
102.29 Requests for correction or amendment to record.
102.30 Appeal of initial Agency determination on correction or amendment of a record.

MISCELLANEOUS

102.31 Maintenance of records of SBA.
102.32 Other provisions.
102.33 Fees.
102.34 General exemptions.
102.35 Specific exemptions.
102.36 Judicial review.

Subpart A—Disclosure of Information

AUTHORITY: The Freedom of Information Act (5 U.S.C. 552), as amended; the Paperwork Reduction Act (44 U.S.C. 35); the Privacy Act of 1974 (5 U.S.C. 552a); the Budget and Accounting Act of 1921 (31 U.S.C. 1 *et seq.*); the Budget and Accounting Procedures Act (31 U.S.C. 67 *et seq.*).

§ 102.1 Purpose and policy.

(a) This part establishes policy and procedures governing public access to information contained in the files, documents, and records of the Small Business Administration (SBA). In keeping with the spirit as well as the letter of the Freedom of Information Act, 5 U.S.C. 552, it reflects SBA policy that disclosure is the general rule rather than the exception. This policy in favor of disclosure will be extended to information technically exempt from disclosure under the law where such disclosure would not adversely affect some legitimate public or private interest the protection of which is desirable, would not otherwise violate law or other authority, and would not impose an unreasonable burden upon SBA.

(b) This part is also a recognition that the soundness of many SBA programs depends in large measure upon the reliability of commercial, technical, financial and business information relating to the affairs of applicants for SBA assistance. Much of this information would, if made public, jeopardize the credit and competitive business position of an applicant. It is essential therefore, that applicants be assured that information of this kind is considered confidential. Thus they will be encouraged to make complete disclosure of material bearing upon an application and SBA decisions on whether financial or other assistance should be approved will be made with greater assurance that the interests of the United States will be protected.

[38 FR 28255, Oct. 12, 1973. Redesignated at 40 FR 46280, Oct. 6, 1975]

§ 102.2 Scope.

(a) This part applies to all files, documents, records, and information obtained or produced by officers and employees of SBA in the course of their official duties as well as all files, documents, records, and other information in the custody or control of any SBA officer or employee. It does not purport to describe or set forth every

Agency file, document, record, or item of information which may or may not be disclosed or to incorporate every exemption from disclosure provided by law. Material described is illustrative rather than exclusive.

(b) Moreover, this part deals with the availability of information to the public, including parties involved in litigation affecting the Agency. It does not apply to the disclosure of information to persons, organizations, or institutions participating in SBA programs or activities, or to the executive and legislative branches of the Federal Government.

[38 FR 28255, Oct. 12, 1973. Redesignated at 40 FR 46280, Oct. 6, 1975]

§ 102.3 Information and records available to the public and exempt from disclosure.

(a) *General.* (1) All SBA information and records not exempt by law are available for public inspection and copying in, or through, facilities described in § 102.4. Exempt materials may also be made available where disclosure would not adversely affect some legitimate public or private interest, would not otherwise violate law or other authority, and would not impose an unreasonable burden on SBA. Reasonable requests for material not in existence may also be honored where their compilation will not unduly interfere with SBA activities and programs. Requests for information will be answered as promptly as practicable.

(2) SBA Standard Operating Procedure (SOP) 40 03 "Disclosure of Information," which is available in the facilities described in § 102.4, sets forth in detail the information, records, and other data which are, or may be, available to the public as well as those exempt from disclosure. Specific examples of information routinely available in SBA facilities are listed in § 102.4. Examples of information and other materials, available and exempt, in which there should be general interest are discussed in succeeding paragraphs of this section.

(b) *Information and records relating to SBA assistance programs.* (1) Although SBA assistance programs typically involve the consideration of material constituting in large part trade secrets, commercial or financial information, information submitted in confidence, or information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, the following kinds of information are nevertheless available to the public:

(i) Names of recipients of loans, small business investment company licenses, certificates of competency, grants, lease guarantees, surety bond guarantees, and other assistance.

(ii) Names of officers, directors, stockholders, or partners of recipient firms.

(iii) The kind and amount of assistance.

(iv) The purpose of the approved assistance in general terms.

(v) The extent of outside participation, if any.

(vi) Statistical data on assistance programs.

(vii) Decisions, rulings, and records showing Agency actions in specific factual situations where identifying details exempt from disclosure may be effectively deleted.

(2) Information exempt from disclosure to the public includes:

(i) Information other than statistical on pending, declined, withdrawn, or canceled applications for assistance.

(ii) Financial or other confidential information about borrowers obtained from any source.

(iii) Individual case files relating to such activities as loans, licenses, lease guarantees, surety bond guarantees, size determinations, facilities inventory, prime and subcontracting, and Service Corps of Retired Executives (SCORE), and other volunteer organizations.

(iv) Internal Agency communications showing, for example, recommendations on applications for assistance.

(v) Information concerning losses, delinquencies and defaults in individual cases, except that such information may be reported to credit reporting agencies pursuant to contract.

(vi) Names of participating lending institutions without their consent, except that the names and/or the Polk Identification Numbers for such institutions may be reported to credit reporting agencies, pursuant to contract.

(vii) Information regarding the character of applicants, borrowers, or other persons.

(viii) Financial reports (including the names of portfolio concerns) of small business investment companies and divestiture plans of such companies.

(ix) Examination, audit, investigation, and litigation reports.

(c) *Opinion Digest*—(1) *Description.* This Digest which is available for inspection and copying in the facilities described in § 102.4, is largely a compilation of selected advisory legal opinions involving specific facts and specific parties. As such they do not necessarily reflect final Agency opinions, interpretations, or decisions in any given cases. Moreover, the opinions are based on authority in effect at the time the opinions were rendered and such authority may no longer be controlling because of a change in law, regulation, or other directive pertaining to the matter. They do, however, provide guides to the reasoning utilized in analyzing given problems and questions which may have widespread implications and are made available to the public primarily on this basis rather than as authoritative statements of continuing precedent.

(2) *Identifying details omitted.* Identifying details have been omitted in most cases to avoid the possibility of violations of 18 U.S.C. 1905 which imposes criminal penalties for the disclosure of trade secrets, financial data, and other confidential information. Also avoided is the disclosure of other information exempt from disclosure. Absence of identifying details as no bearing or effect on the general public and does not affect the validity of the opinion disclosed.

(d) *Size decisions.* Agency determinations of the size status of business concerns resulting from appeals to the Size Appeals Board, as provided in Part 121 of this chapter, have been summarized and indexed in the Digest of the Decisions of the Size Appeals Board, available for inspection and copying in the facilities described in § 102.4. Complete decisions will be available on request except that in cases which contain trade secrets, commercial or financial information, or other confidential information, they will be available if identifying details can be deleted without compromising the confidential information.

(e) *Minutes of the Loan Policy Board.* These are available for inspection and copying in the National Office. The Loan Policy Board was terminated by Reorganization Plan No. 4 of 1965, effective July 27, 1965, and its functions transferred to the SBA Administrator. Despite the Board's abolition, policies adopted by the Board remain in effect until affirmative action by the Administrator changes them. The minutes provide guides to the reasons for many such policies. Part 120 of this chapter contains a statement of SBA's loan policies.

(f) *Personnel and similar files.* The names, position titles, grades, salaries, and duty stations of SBA employees are public information but their home addresses are not so considered. The disclosure of private or personal information contained in other Agency files, for example, in the files, relating to members of SBA advisory boards, committees, or councils and Service Corps of Retired Executives (SCORE) and to applicants for SBA assistance would normally amount to a clearly unwarranted invasion of privacy and thus would be considered exempt.

(g) *Agency staff directives, standard operating procedures, and other instructions to staff.* All are considered public information except those relating to audits and investigations, internal financial management and fiscal operations, and portions of directives containing confidential standards and instructions, as, for example, instructions concerning negotiations or bargaining in connection with the disposition and liquidation of loans and loan collateral held by SBA.

(h) *Litigation materials.* Copies of pleadings, motions, orders, transcripts of testimony, and documentary evidence introduced in pending or closed litigation are available once such items are a matter of public record.

(i) *Internal communications.* Interagency or intra-agency communications not routinely available to a party in litigation with SBA are exempt from disclosure. These would include, among other things, drafts, memoranda between officials, or agencies, opinions and interpretations prepared by SBA attorneys and other staff members or consultants for use of the Agency (except as made available in the Opinion Digest referred to in paragraph (c) of this section), research studies performed internally or under contract for internal management purposes, and internal management reports, which relate to the policymaking and decisional processes of the Agency and its officials. However, the exemption does not apply to nonexempt material contained in such communications if severable in such a way as not to compromise the policymaking and decisional processes intended to be protected by this exemption.

(j) *Mailing lists.* The Agency considers exempt from public disclosure as an unwarranted invasion of privacy mailing lists of its clientele, employees, advisory councils, and other persons and organizations involved or dealing with the Agency. The Agency will not distribute, sell, or otherwise make available the names and addresses of such persons and organizations for purposes of commercial or other solicitation not clearly in the public interest.

(k) *Disclosure of segregable portions of records.* If a record contains both disclosable and nondisclosable information, any reasonably segregable portion of such record shall be provided to the requester after deletion of the nondisclosable portions.

(l) *Public Index of SBA materials.* The Public Index providing identifying information for the public as to matters issued, adopted, and promulgated by the Agency is available for inspection and copying. The Agency has determined that periodic publication and distribution is unnecessary and impracticable as permitted by the Freedom of Information Act.

[38 FR 28255, Oct. 12, 1973, as amended at 40 FR 7898, Feb. 24, 1975. Redesignated at 40 FR 46280, Oct. 6, 1975, as amended at 49 FR 40565, Oct. 17, 1984]

§ 102.4 Public access to information and records.

(a) *Facilities.* Facilities in SBA regional and district offices are available to the public during normal business hours for requesting, inspecting and copying information and records. Reproduction machines will also be available in, or through, such facilities. The Washington, D.C. District Office facilities are available to members of the public in the District of Columbia, Metropolitan Area and that office will make necessary referrals to the National Office in appropriate cases. A list of these offices is included in Part 101 of this chapter or may be obtained by writing to the Small Business Administration, Washington, D.C. 20416. Addresses and telephone numbers of SBA offices are also included in the telephone directories for the many cities in which the offices are located.

(b) *Materials routinely available in field office facilities.* (1) For the convenience of the public certain Agency materials will be maintained and readily available in or through these facilities. These will include:

(i) All SBA directives, policy and procedural issuances, and other staff instructions not exempt from disclosure.

(ii) SBA Rules and Regulations (including Interpretations).

(iii) Opinion Digest.

(iv) Digest of the Decisions of the Size Appeals Board which summarizes decisions resulting from appeals of small business size decisions to SBA's Size Appeals Board.

(v) Public Index of Agency materials and lists of directives, policy and procedural issuances, forms, and reports.

(vi) Names of recipients of SBA assistance, and related information not exempt from disclosure.

(2) Examples of other kinds of materials which, in addition to the above, may also be available, through the field office facilities or in the National Office:

(i) Minutes of the Loan Policy Board (National Office only).

(ii) Management and technical assistance publications issued on a free or for-sale basis, as listed on SBA Forms 115 A and B.

(iii) SBA's Annual Reports to the President and the Congress.

(iv) SBIC Digest and policy procedural releases sent to all small business investment companies.

(v) Press releases.

(vi) Routine statistical reports on Agency activities.

(vii) Pamphlets describing SBA programs.

(viii) Sample SBA forms.

(ix) Comments on proposed rulemaking received from the public (National Office only).

(c) *Other materials.* Requests for information, records, and other materials not readily available in the field office facilities may be requested through such facilities. Requests will be referred to the proper SBA office and the person making the request will be notified of the availability of the material and any charges involved. If the material requested is the exclusive concern of another agency the request will be referred to that agency. If the material is of concern to more than one agency, the request will be referred to the agency whose interest is paramount for a decision to disclose or withhold the material.

(d) *Identifiable records*—(1) *Specificity required.* Requests shall include a reasonably specific description of the particular record sought in order to facilitate its location. A request shall not be denied on the sole ground that the record has not been properly identified if the description and the knowledge Agency personnel have of the contents of their files, together enable the record to be located without unduly burdening the Agency.

(2) *Categorical requests.* Requests calling for all records falling within a reasonably specific category shall be regarded as "identifiable records" if the Agency can reasonably determine which particular records come within the request, and can retrieve them without undue burden on its operations because of the staff time consumed or the resulting disruption of files. If the Agency determines that there is such an undue burden, the requester shall nevertheless have the opportunity to discuss his request with Agency staff in order to reduce it to manageable proportions.

(e) *Forms for requesting information.* (1) SBA Form 774, "Request for SBA Forms, Documents, Records and Other Information" is used for processing requests. Any person desiring information or records may be asked to complete Part 1 of the form identifying the material requested and the copies, if any, desired. If requests are received by mail or telephone, Part I will be completed by SBA.

(2) SBA Form 778 is a form letter or notice which will advise the requester of the availability of the material, any charges involved, or the referral of the request to another office or agency.

(3) SBA Form 772 will be used to record transactions involving charges and a copy thereof will serve as a receipt to the purchaser.

(f) *Written requests under the Freedom of Information Act*—(1) *Time limitations.* If a request for information and records is made in writing, it shall be considered a request under the Act and a determination whether, or the extent to which, the Agency will comply with the request shall be made within 10 working days after receipt of the request by the Agency. In unusual circumstances the Act permits an extension of up to 10 days if the Agency gives written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be sent. As defined in the Act, "unusual circumstances" means:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the Agency having substantial subject-matter interest therein.

(2) *Notice of denial of request.* A denial of a request or any part thereof under this paragraph must be in writ-

ing, and must advise the requester of a right to appeal to the Freedom of Information Act Officer, Small Business Administration, Washington, D.C. 20416, by letter or other written communication containing a description of the information requested, the name and place of employment of the SBA official or employee who denied the request, the reason, if any, given for the denial, and such other pertinent facts as the requester deems appropriate. The notice of denial must also contain the names and titles or positions of each person responsible for the denial of the request.

[38 FR 28255, Oct. 12, 1973, as amended at 40 FR 7898, Feb. 24, 1975. Redesignated at 40 FR 46280, Oct. 6, 1975, and amended at 43 FR 38573, Aug. 28, 1978; 44 FR 31010, May 30, 1979]

§ 102.5 Administrative appeal of refusal to disclose.

(a) *Who may appeal.* Any person whose request for information or records has been denied may submit a written appeal to the Agency. A failure by the Agency to act on a request within the time limit imposed by § 102.4(f) of this part shall be deemed a denial for purposes of appeal.

(b) *Form of appeal.* While no particular form is prescribed, the letter or other written statement utilized for such purpose shall contain a description of the information or record requested, the name and place of employment of the SBA official or employee who denied the request, the reason, if any, given for the denial, and such other pertinent facts and statements as the appellant may deem appropriate. SBA may request additional details where the information submitted is insufficient to support a decision.

(c) *Where to appeal.* Appeals shall be addressed to the Freedom of Information Act Officer, Small Business Administration, Washington, D.C. 20416.

(d) *Nature of appeal.* An appeal shall be deemed by SBA to constitute a request that the information or records sought are not exempt from disclosure under the law but, if exempt, that they should nevertheless be disclosed in accordance with the policy stated in § 102.1(a).

(e) *Agency decision*—(1) *Who decides.* Final Agency decisions on appeals from refusals to disclose information or records shall be made by the Freedom of Information Act Officer, who shall promptly review each appeal and provide appellant and other interested parties, if any, with a written notice of the decision.

(2) *Notice of decision.* If the decision upholds the refusal to disclose, the notice shall set forth the exemptions from disclosure under the Freedom of Information Act which form the basis of the decision. The notice shall also advise that judicial review is available on complaint to the district court of the United States in the district in which the appellant resides, or has his principal place of business, or in which the Agency records are located, or in the District of Columbia.

(3) *Time limitations.* The decision on the appeal to determine whether, or the extent to which, the Agency will comply with the request for information or records shall be made within 20 working days after receipt of such appeal. In unusual circumstances as defined in § 102.4(f)(1) of this part, an extension of up to 10 days, less any time used under the extension permitted by § 102.4(f)(1), is authorized, if the Agency sends written notice to the requester setting forth the reasons for the extension and the date on which the decision is expected to be sent.

[38 FR 28255, Oct. 12, 1973, as amended at 40 FR 7899, Feb. 24, 1975. Redesignated at 40 FR 46280, Oct. 6, 1975, and amended at 41 FR 35675, Aug. 24, 1976; 43 FR 38573, Aug. 28, 1978; 44 FR 31010, May 30, 1979]

§ 102.6 Fees.

(a) *Definitions.* For the purpose of these regulations all the terms defined in the Freedom of Information Act apply.

(1) The term "direct costs" means those expenditures which SBA actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits)

and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

(3) The term "duplication" refers to the process of making a copy of a document necessary to respond to an FOIA request. Such copies can take the form of paper copy, microfilm, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk) among others. The copy provided must be in a form that is reasonably usable by the requester.

(4) The term "review" refers to the process of examining documents located in response to a request that is for a commercial use (see paragraph (a)(5) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) The term "'commercial use' request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, SBA will determine the use to which a requester will put the documents requested. Moreover, where SBA has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, SBA will seek additional clarification before assigning the request to a specific category.

(6) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced above, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but SBA may also look to the past publication record of a requester in making this determination.

(b) *Basis upon which fees are to be charged.* SBA will charge fees that recoup the full allowable direct costs it incurs. SBA will use the most efficient and least costly methods to comply with requests for documents made under the FOIA.

(1) *Manual searches for records.* SBA will charge $9 per hour for clerical personnel and where the identification of records pertinent to a request necessitates the use of professional per-

sonnel the search charge shall be $18 per hour.

(2) *Computer searches for records.* SBA will charge at the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search.

(3) *Review of records.* Only requesters who are seeking documents for commercial use may be charged for time SBA spends reviewing records to determine whether they are exempt from mandatory disclosure. It should be noted that charges may be assessed only for the initial review; i.e., the review undertaken the first time SBA analyzes the applicability of a specific exemption to a particular record or portion of a record. SBA may not charge for review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable, especially where that review is necessary due to a change in circumstances. SBA will charge $18 per hour for professional review of a requested record for possible disclosure.

(4) *Duplication of records.* SBA has established an agency-wide, per page charge for paper copy reproduction of documents of ten cents per page. This charge shall represent the reasonable direct costs of making such copies, taking into account the salary of the operators as well as the cost of the reproduction machinery. For copies prepared by computer, such as tapes or printouts, SBA shall charge the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, SBA will charge the actual direct costs of producing the document(s).

(5) *Other charges.* It should be noted that complying with requests for special services such as those listed below is entirely at the discretion of SBA. Neither the FOIA nor its fees structure cover these kinds of services. SBA will recover the full costs of providing services such as those enumerated below to the extent that SBA elects to provide them:

(i) Certifying that records are true copies;

(ii) Sending records by special methods such as express mail, etc.

(6) *Restrictions on assessing fees.* With the exception of requesters seeking documents for a commercial use, section 4(A)(iv) of the Freedom of Information Act, as amended, requires SBA to provide the first 100 pages of duplication and the first two hours of search time without charge. Moreover, this section prohibits SBA from charging fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. These provisions work together, so that except for commercial use requesters, SBA would not begin to assess fees until after it had provided the free search and reproduction. For example, for a request that involved two hours and ten minutes of search time and resulted in 105 pages of documents, SBA would determine the cost of only 10 minutes of search time and only five pages of reproduction. If this cost was equal to or less than the cost to the agency of billing the requester and processing the fee collected, no charges would result. SBA's Freedom of Information/Appellate Office will be the entity within SBA which determines if the cost to the agency of billing the requester and processing the fee collected will be equal to or greater than the cost to be recovered.

(i) The elements to be considered in determining the "cost of collecting a fee" are the administrative costs to the agency of receiving and recording a requester's remittance, and processing the fee for deposit in the Treasury Department's special account (or the agency's account if the agency is permitted to retain the fee). The per-transaction cost to the Treasury to handle such remittances is negligible and should not be considered in the agency's determination.

(ii) For purposes of these restrictions on assessment of fees, the word "pages" refers to paper copies of a standard agency size which will normally be "8½ x 11" or "11 by 14." Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout, however, might meet the terms of the restriction.

(iii) Similarly, the term "search time" in this context has as its basis, *manual search.* To apply this term to searches made by computer, SBA will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, i.e., the operator, SBA will begin assessing charges for computer search.

(7) In practice, if SBA estimates that fees are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost. If a requester avails himself or herself of the opportunity to reformulate the request, SBA will require that the requester provide a declaration to SBA agreeing to pay up to a specified amount of charges before SBA will satisfy the request.

(c) *Fees to be charged—Categories of requesters.* There are four categories of FOIA requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. Specific levels of fees will be charged for each of these categories.

(1) *Commercial use requesters.* When SBA receives a request for documents for commercial use, it will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Requesters must reasonably describe the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 pages of reproduction of documents.

(2) *Educational and non-commercial scientific institution requesters.* SBA shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

(3) *Requesters who are representatives of the news media.* SBA shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in section (a)(8) above, and his or her request must not be made for a commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use.

(4) *All other requesters.* SBA shall charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Moreover, requests from record subjects for records about themselves filed in agencies' systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction. Requesters must reasonably describe the records sought.

(d) *Methods of assessing charges*—(1) *Charging interest—notice and rate.*

SBA shall begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in Section 3717 of Title 31 U.S.C. and will accrue from the date of the billing.

(2) *Charges for unsuccessful search.* SBA may assess charges for time spent searching, even if the agency fails to locate the records or if records located are determined to be exempt from disclosure. In practice, if the agency estimates that search charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with SBA personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(3) *Aggregating requests.* Except for requests that are for a commercial use, SBA may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents solely in order to avoid payment of fees. When SBA reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the agency may aggregate any such requests and charge accordingly.

(4) *Advance payments.* SBA may not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless:

(i) The agency estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. Then, SBA will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(ii) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), SBA may require the requester to pay the full amount owed plus any applicable interest as provided above or demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the SBA begins to process a new request or a pending request from that requester.

(iii) When SBA acts under paragraphs (d) (1) or (2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e, 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after the agency has received fee payments described above.

(5) *Payment of fees.* The requester should make all checks or money orders payable to the U.S. Small Business Administration. All checks or money orders should be forwarded by the responsible SBA employee along with a completed SBA Form 772 to the Cashier's Office, SBA Central Office, 1441 L Street, NW., Washington, DC 20416.

(e) *Fee waivers.* SBA may furnish documents under these regulations without any charge or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester. All requests for a waiver or reduction of fees should be addressed to SBA's Freedom of Information Appellate Office, 2100 K Street, NW., Room 303, Washington, DC 20416. That office will render all determinations on such requests.

[52 FR 47699, Dec. 16, 1987]

§ 102.7 Appearances and testimony by SBA officers and employees.

Whenever an officer or employee of SBA is served with a subpoena demanding the disclosure of the information or the production of files, documents, and records described in this part, or is requested by any court, committee or other body to disclose such information, the officer or employee shall promptly inform his superior of the requirements of the subpoena or request and shall ask for instructions from the Freedom of Information Act Officer with respect thereto. Such officer or employee shall appear before the committee or body and, if the Freedom of Information Act Oficer has not authorized disclosure, the employee shall respectfully decline to disclose the information or produce the files, documents and records demanded or requested, basing such refusal upon this part.

[38 FR 28255, Oct. 12, 1973. Redesignated at 40 FR 46280, Oct. 6, 1975, and amended at 41 FR 35675, Aug. 24, 1976; 43 FR 38573, Aug. 28, 1978; 44 FR 31010, May 30, 1979]

Subpart B—Privacy Act of 1974

AUTHORITY: Privacy Act of 1974 (Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a)).

SOURCE: 40 FR 46280, Oct. 6, 1975, unless otherwise noted.

§ 102.20 Purpose, policy and scope.

This part establishes policy and procedures of the Small Business Administration (SBA) safeguarding an individual against an invasion of personal privacy. Except as otherwise provided by law or regulation issued pursuant thereto SBA officials and employees will:

(a) Permit an individual to determine what records pertaining to him or her are collected, maintained, used, or disseminated by the SBA;

(b) Permit an individual to prevent records, pertaining to him, or her, obtained by SBA for a particular purpose from being used or made available for another purpose without his or her consent;

(c) Permit an individual to gain access to information pertaining to him or her in the SBA records, to have a copy made of all or any portion thereof, and to correct or amend such records;

(d) Collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information; and

(e) Permit exemptions from the requirements with respect to records provided in 5 U.S.C. 552a (Privacy Act of 1974) only where an important public policy need for such exemption has been determined by specific statutory authority.

§ 102.21 Definitions.

As used in this subpart:

(a) "Agency" means the Small Business Administration (SBA) and includes all of its offices wherever located;

(b) "Employee" means any officer or employee of the Small Business Administration, regardless of his or her grade, status, or place of employment;

(c) "Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence. This term shall not encompass entrepreneurial enterprises (e.g., sole proprietors, partnerships, corporations, or other forms of business entities);

(d) "Maintain" includes maintain, collect, use, or disseminate;

(e) "Record" means any item, collection, or grouping of information about an individual that is maintained by the Small Business Administration, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger, or voice print or a photograph;

(f) "System of records" means a group of any records under the control of Small Business Administration from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(g) "Statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual; and

(h) "Routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

§ 102.22 Officials responsible for Privacy Act of 1974.

(a) "Program Official" is the Agency official in every field office and major program area responsible for the system or systems of records in his area. Responsibilities of this position include:

(1) Responding to requests for information from individuals and other sources received from Systems Managers.

(2) Discussing records with individuals.

(3) Amending records in cases where amended information is not controversial and does not involve policy decision making.

(4) Informing individuals of any reproduction fees to be charged

(5) Maintaining appropriate recordkeeping.

(6) Reviewing records for relevance, timeliness, completeness, and accuracy.

(7) Providing Systems Managers with material for required reports and for publication of rules and notices in the FEDERAL REGISTER.

(b) "Systems Manager" is the Agency employee in each office responsible for implementing and overseeing this regulation and 5 U.S.C. 552a in his or her office. Responsibilities of this position include:

(1) Acting as initial contact person to individuals seeking access or amendment of their records.

(2) Preparing and forwarding access and amendment forms to the appropriate Program Official.

(3) Discussing with the Program Officials requests for which access or amendment will not be allowed, and making initial Agency decisions on access and amendment.

(4) Collecting information from the Program Official and compiling information required for reports and for publication of rules and notices in the FEDERAL REGISTER.

(5) Implementing and administering the records management program within his area of jurisdiction, including training of personnel, keeping required statistical records and making necessary reports.

(d) "Privacy Act Officer" is the Agency official with delegated responsibility for overseeing and implementing 5 U.S.C. 552a and Subpart B of Part 102 of SBA regulations. Responsibilities of this position include:

(1) Developing training programs for agency personnel in the provisions of the Act and the proposed records management procedures for implementation.

(2) Developing materials such as forms, reporting formats, and directives for implementing the Act.

(3) Preparing reports to the Congress, OMB, and the President, and preparing rules and notices for publication in the FEDERAL REGISTER.

(4) Approving extensions of review periods.

(5) Monitoring the relevance, accuracy, and completeness of records contained in systems of records.

(6) Reviewing appeals referred by Systems Managers concerning requests for amendment and access to records.

(7) Making final Agency decisions on requests for amendment and access to records.

DISCLOSURES

§ 102.23 General conditions of disclosure.

The Agency shall not disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless such disclosure is:

(a) To those employees of the Agency who have a need for the record in the performance of their duties;

(b) Required under 5 U.S.C. 552 (Freedom of Information Act);

(c) For a routine use of the record compatible with the purpose for which it was collected;

(d) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to Title 13, United States Code;

(e) To a recipient who has provided the Agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable·

(f) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Administrator of General Services or his or her designee to determine whether the record has such value;

(g) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Privacy Act Officer specifying the particular portion desired and the law enforcement activity for which the record is sought;

(h) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(i) To either House of Congress, or, to the extent of matter within its jurisdiction, and committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(j) To the Comptroller General, or any of his or her authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(k) Pursuant to the order of a court of competent jurisdiction.

§ 102.24 Information compiled for civil action.

Nothing in these regulations shall allow an individual access to any information compiled by the Agency in reasonable anticipation of a civil action or proceeding. In the event that there should be a question as to whether information should be disclosed pursuant to this section, an opinion shall be obtained from Agency counsel.

§ 102.25 Disclosure of record to person other than the individual to whom it pertains.

(a) Prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to § 102.23(b) of this subpart, the Program Official responsible for the Agency system of records shall make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for Agency purposes.

(b) The Program Official shall make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a public record. When a record is disclosed under compulsory legal process, the Program Official may ask legal counsel for a determination as to whether the issuance of the order is a matter of public record and if counsel so determines, then the Program Official shall notify the individual by mail at his or her last known address. If counsel determines the matter is not of public record, he should request to be advised as to when it becomes public and inform the Program Official so that he may mail the notice at the appropriate time.

§ 102.26 Accounting of disclosures.

(a) With respect to each system of record under Agency control, the Agency will (except for disclosure made under § 102.23 (a) or (b) of this subpart) keep an accurate accounting.

(b) The Program Official shall account for disclosures in the manner defined by Agency guidelines in respect to each system of records under his or her control as follows:

(1) For each disclosure of a record to any person or to another agency made under § 102.23 of this subpart, maintain information consisting of the date, nature, and purpose of each disclosure of a record, and the name and address of the person or agency to whom the disclosure is made;

(2) Retain the accounting at least 5 years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) Except for disclosures made under § 102.23(g) of this subpart make the accounting under paragraph (a) of this section available to the individual named in the record at his or her request; and

(4) Inform any person or other agency about any correction or notation of dispute made by the Agency in accordance with § 102.30(e) of this subpart of any record that has been disclosed to the person or agency, if an accounting of the disclosure was made.

(c) An annual report will be prepared by the Privacy Officer disclosing all of the above and a copy of this report will be available for inspection in every Agency field office and the Central Office.

ACCESS AND AMENDMENT

§ 102.27 Requests by individuals to gain access to records.

(a) Any individual upon request may gain access to his or her record or to any information pertaining to him or her which is contained in any system of records maintained by the Agency, except as otherwise provided by law or regulation. Upon request, a person of his or her own choosing will be permitted to accompany him or her to review the record and have a copy made of all or any portion thereof in a form comprehensible to the individual. The Agency will require, however, a written statement from the individual authorizing discussion of that individual's record in the accompanying person's presence.

(b) The request for access must contain a reasonable description of the Agency system or systems of records sought. The request should be made to the Systems Manager concerned or, if this is not known, to the Privacy Act Officer, Small Business Administration, 1441 L Street N.W., Washington, D.C. 20416, who will direct the request to the proper Agency official, or if this cannot be ascertained, inform the individual to make the request more specific.

(c) All such requests for information may be made in writing or on forms which shall be available in all SBA offices and provided free of charge for such purposes. The Systems Manager, after reviewing the request for information, may also request other identification of the individual for verification, such as (1) the employee number, (2) the dates of employment, (3) Disaster Home Loan number, (4) driver's license, (5) Medicare card, (6) a signed statement or (7) any additional information as he deems necessary for conclusive verification. The Systems Manager may request a Social Security Number for individual verification, although access may not be denied for refusal to disclose this number as provided in § 102.32(e). If he is unable to identify the record from the information submitted, he may require additional information. Requests will be honored only after showing, satisfactory to the Systems Manager, that the individual or his representatives has proper authorization.

(d) The Systems Managers in the offices or programs involved will notify the individual requesting disclosure of his or her record or information pertaining to him or her of the time, place and conditions under which the Agency will comply to the extent permitted by law and regulation.

(e) Upon receipt of a request for access to a record the Systems Manager shall promptly, but in any case within ten (10) days (excluding Saturdays, Sundays, and legal public holidays) after date of receipt of the request, notify the individual in writing that the request has been granted or denied. In the event that the request is granted, the notification to the requestor should state: (1) The Agency's determination that, unless requestor objects for good cause, it can grant access to a record only by providing a copy through the mail because it cannot otherwise provide reasonable means for the individual to have access to his or her record in person; or (2) the time and place(s) where the record may be reviewed.

[40 FR 46280, Oct. 6, 1975, as amended at 41 FR 43711, Oct. 4, 1976]

§ 102.28 Appeal to Privacy Act Officer.

(a) Any individual who disagrees with the initial Agency decision to deny access to his or her record may request a review of such refusal by addressing his or her written request to the Privacy Act Officer. All such requests for appeal should be submitted within thirty (30) days of the date of denial, or within ninety (90) days of such request if the appeal is from a failure to make a determination. Requests should specify the reasons for said review and shall be accompanied by affidavits, statements or such other supporting material as the individual feels necessary to justify his or her appeal.

(b) The Privacy Act Officer shall consider the decision of the Systems Manager together with the material submitted by the requesting individual. The Privacy Act Officer may also examine any other materials which he or she may consider relevant. He or she may call upon the Office of General Counsel for a legal opinion and any other Agency or program official who might have specialized knowledge in the pertinent area. In conducting the appeal, the Privacy Act Officer should follow the criteria for access to records specified in 5 U.S.C. 552a and SBA regulations.

(c) The Privacy Act Officer shall, not later than thirty (30) days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final Agency determination unless, for good cause shown, the Privacy Act Officer extends such thirty (30) day period.

(d) In the event that the Privacy Act Officer extends the period he or she shall inform the individual of the extension and notify the individual of the date on which he or she can expect a decision. If, after his or her review, the Privacy Act Officer also refuses to grant access to the record, he or she shall notify the individual of the reason for denial and the provisions for judicial review of the Agency determination.

§ 102.29 Requests for correction or amendment to record.

(a) Any individual may request the Agency to amend a record pertaining to him or her. The request should be made to the Systems Manager concerned or, if this is not known, to the Privacy Act Officer, Small Business Administration, 1441 "L" Street NW., Washington, D.C. 20416.

(b) All requests by an individual to amend a record shall be made in writing, to the Systems Manager, with supporting documentation as may be necessary, and preferably on forms provided by the Agency. The Systems Manager shall not later than ten (10) days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request to amend a record, acknowledge in writing such receipt. The Systems Manager shall promptly:

(1) Make any correction of any portion thereof which the individual believes is not accurate, relevant, timely or complete; or

(2) Inform the individual of the Agency's initial refusal to amend the record in accordance with the request, the reason for the refusal and the name and address of the Privacy Act Officer to whom the individual may appeal the decision.

(c) Systems Managers shall, upon request by individuals seeking to have a record pertaining to them amended, give advice as to the procedures to be followed hereunder.

(d) Systems Managers shall, if the request for amendment has been granted, send an amended copy of the record to prior recipients of the record.

[40 FR 46280, Oct. 6, 1975, as amended at 41 FR 43711, Oct. 4, 1976]

§ 102.30 Appeal of initial Agency determination on correction or amendment of a record.

(a) Any individual who disagrees with the refusal of the Systems Manager to amend his or her record may request a review of such refusal by addressing his or her written request to the Privacy Act Officer. All such requests for appeal should be submitted within thirty (30) days of the date of denial, or within ninety (90) days of such request if the appeal is from a failure to make a determination. Requests should specify the reasons for said review and shall be accompanied by affidavits, statements or such other supporting material as the individual feels necessary to justify his or her appeal.

(b) The Privacy Act Officer shall consider the initial decision of the Systems Manager and the material submitted by the requesting individual, together with any and all other materials which he or she may consider relevant. He or she may call upon the Office of General Counsel for a legal opinion and any other Agency or program official who might have specialized knowledge in the pertinent area, to aid in the decision. In conducting the appeal, the Privacy Act Officer shall use the criteria of accuracy, relevance, timeliness, and completeness of the record. The Privacy Act Officer may, at his or her option, seek such additional information as is deemed necessary to satisfy those criteria, i.e., to establish that the record contains only that information which is necessary, accurate, and complete to assure fairness in any determination which may be made about the individual on the basis of the record. With respect to requests to delete information contained in an Agency file, the Privacy Act Officer should follow the same criteria as above, namely, that the information in the file must be only that which is relevant and necessary to accomplish the purpose of the Agency required to be accomplished by law or regulation.

(c) The Privacy Act Officer shall, not later than thirty (30) days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final Agency determination unless, for good cause shown, the Privacy Act Officer extends such thirty (30) day period. The Privacy Act Officer should not extend the time hereunder unless "unusual circumstances" are found to exist.

(d) In the event that the Privacy Act Officer extends the period, he or she shall inform the individual of the extension and notify him or her of the date on which a decision can be expected. If, after his or her review, the Privacy Act Officer also refuses to amend the record in accordance with the request, he or she shall permit the individual to file with the Agency a concise statement setting forth the reasons for his or her disagreement with the refusal of the Agency, and notify the individual of the provisions for judicial review of the Agency determination.

(e) In any subsequent disclosure, containing information about which an individual has filed a statement of disagreement with an Agency refusal to amend a record, the Agency shall clearly note any portion of the record which is disputed and provide copies of the statement of disagreement and, if the Privacy Act Officer deems it appropriate, copies of a concise statement of the reasons of the Agency for not making the Amendments requested, to persons or other agencies to whom the disputed record has been disclosed.

(f) In the event that an individual has filed a statement of disagreement with an Agency refusal to amend a record, the Agency shall clearly note any portion of the record which is disputed and provide copies of the statement of disagreement and, if the Privacy Act Officer deems it appropriate, copies of a concise statement of the reasons of the Agency for not making amendments requested, to prior recipients of the disputed record.

[40 FR 46280, Oct. 6, 1975, as amended at 41 FR 43712, Oct. 4, 1976]

MISCELLANEOUS

§ 102.31 Maintenance of records of SBA.

(a) The Privacy Act Officer shall be responsible to see that the Agency:

(1) Maintains in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the Agency required to be accomplished by statute or by Executive Order of the President;

(2) Collects information to the greatest extent practicable directly from the subject individual when the information may result in adverse determi-

nations about an individual's rights, benefits, and privileges under Federal programs;

(3) Informs each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual;

(i) The authority (whether granted by statute, or by Executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(ii) The principal purpose or purposes for which the information is intended to be used;

(iii) The routine uses which may be made of the information, as published pursuant to 5 U.S.C. 552a; and

(iv) The effects on him or her, if any, of not providing all or any part of the requested information;

(4) Publishes in the FEDERAL REGISTER at least annually a notice of the existence and character of the system of records, which notice shall include;

(i) The name and location of the system;

(ii) The categories of individuals on whom records are maintained in the system;

(iii) The categories of records maintained in the system;

(iv) Each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(v) The policies and practices of the Agency regarding storage, retrievability, access controls, retention, and disposal of the records;

(vi) The title and business address of the Agency official who is responsible for the system of records;

(vii) The Agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

(viii) The Agency procedures whereby an individual can be notified at his request how he or she can gain access to any record pertaining to him or her contained in the system of records, and how he or she can contest its content; and

(ix) The categories of sources of records in the system.

(b) The Privacy Act Officer shall, in addition to his other duties hereunder:

(1) Establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and procedures adopted pursuant to this subpart and the penalties for noncompliance;

(2) Establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained; and

(3) At least thirty (30) days prior to publication of information under paragraph (a)(4) of this section publish in the FEDERAL REGISTER notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the Agency; and

(4) Maintain all records which are used by the Agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual.

(c) The Systems Managers shall be responsible for seeing that their office maintains no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity. The exercise of these rights includes, but is not limited to, religious and political beliefs, freedom of speech and the press, and freedom of assembly and to petition.

§ 102.32 Other provisions.

(a) *Personnel Records.* All Agency personnel records and files, as prescribed by the Civil Service Commission, shall be maintained in such a way that the privacy of all individuals concerned is protected in accordance with regulations of the Civil Service Commission (5 CFR Parts 293 and 297).

(b) *Systems Operated by Contract.* In the event that the Agency shall provide by a contract for the operation by or on behalf of the Agency of a system of records to accomplish an Agency function, the Agency shall, consistent with its authority, cause the requirements of this subpart to be applied to such system. Any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this regulation, shall be considered to be an employee of the Agency for the purposes of this regulation.

(c) *Mailing List.* The Agency will not sell or rent an individual's name or address. This provision shall not be construed to require the withholding of names or addresses otherwise permitted to be made public.

(d) *Changes in Systems.* The Agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers.

(e) *Social Security Numbers.* The Agency shall not, henceforth, require any individual to disclose his or her social security account number and shall not deny to any individual any right, benefit, or privilege provided by law because of his or her refusal to so disclose. Any Agency request for an individual to disclose his or her social security account number shall inform that individual that disclosure is voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

(f) *Disclosure to Representative.* Upon request, personnel records of an employee or former employee, shall be disclosed to the individual to whom the record pertains and under whose individual name and/or identifier they are filed. A person of his or her own choosing may accompany the individual when the record is disclosed, or the record may be released to the individual's representative who has the notarized written consent of the employee or former employee. Any disclosure of original records must be made in the presence of a representative of the Agency having physical custody of the records. (See 5 CFR 297.111(a).)

(g) *Representatives of Minors and Incompetents.* For the purpose of Subpart B of Part 102, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(h) *Medical Records.* Medical records shall be disclosed to the individual to whom they pertain unless, in the judgment of the Privacy Act Officer, access to such record could have an adverse effect upon such individual. The Agency may, however, transmit such information to a medical doctor named by the requesting individual. In regard to medical records in personnel files, see also 5 CFR 297.111(a)(1).

§ 102.33 Fees.

(a) The Agency shall charge no fee for providing the first copy of a record or any portion thereof to an individual requesting disclosure of information filed in his or her personnel records. (5 CFR 297.115.)

(b) For all other copies of records made pursuant to this regulation, the Agency will not charge for the cost of any search for and review of the record and when the Agency makes a copy of a record as a necessary part of its process of making the record available for review, but may charge for all other reproduction at ten cents per page.

(c) Fees will be waived when less than $5.

§ 102.34 General exemptions.

(a) *Systems of records affected.* Under the general exemption provisions of 5 U.S.C. 552a(j)(2), the Administrator of SBA is authorized to exempt the following system of records from all provisions of the Privacy Act of 1974 except subsections (b); (c) (1) and (2); (e)(4) (A) through (F); (e) (6), (7), (9), (10), and (11); and (i) of the Act:

SBA Investigation Files—SBA 360, a system of records maintained by the Investigations Division of the Office of Inspector General (OIG), which primarily consists of information compiled for the purpose of criminal investigations conducted by OIG and associated with identifiable individuals.

(b) *Scope of exemption.* The system of records listed in § 102.34(a) is exempt pursuant to 5 U.S.C. 552a(j)(2) to the extent that information in this system consists of:

(1) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, confinement, release, and parole and probation status;

(2) Information compiled for the purpose of criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(3) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

(c) *Reasons for exemption.* Since the Investigations Division of the OIG is a component of SBA which performs as its principal function activities pertaining to the enforcement of criminal laws within the meaning of 5 U.S.C. 552a(j)(2), the system of records described in § 102.34(a) is exempt for one or more of the following reasons:

(1) To prevent the subjects of OIG investigations from using the Privacy Act to frustrate the investigative process.

(2) To protect the identity of Federal employees who furnish a complaint or information to the OIG, consistent with section 7(b) of the Inspector General Act of 1978, 5 U.S.C. App. I.

(3) To protect the confidentiality of other sources of information.

(4) To avoid endangering confidential sources and law enforcement personnel.

(5) To prevent interference with law enforcement proceedings.

(6) To assure access to sources of confidential information, including that contained in Federal, State and local criminal law enforcement information systems.

(7) To prevent the disclosure of investigative techniques.

(8) To prevent the disclosure of classified information.

[49 FR 29944, July 25, 1984; as amended at 49 FR 31660, Aug. 8, 1984]

§ 102.35 Specific exemptions.

(a) *Systems of records subject to investigatory material exemption under 5 U.S.C. 552a(k)(2), or 5 U.S.C. 552a(k)(5), or both.*

(1) *Audit Reports—SBA 025,* a system containing investigations concerning the use of funds by recipients of disaster home loans;

(2) *Litigation and Claims File—SBA 220,* a system containing information concerning recipients of disaster home loans and other individuals who are parties to lawsuits or claims involving SBA;

(3) *Personnel Security Files—SBA 315,* a system containing background information on active and inactive SBA employees;

(4) *Security and Investigations Files—SBA 360,* a system which contains information on individuals seeking or receiving SBA assistance, individuals involved in businesses or other organizations seeking or receiving such assistance, representatives of applicants for SBA assistance, members of advisory councils, and SCORE/ACE volunteers;

(5) *Security and Investigation Referrals—SBA 365,* a system containing information relating to referrals for investigation of possible misconduct by SBA employees, and individuals involved in seeking or obtaining SBA assistance; and

(6) *Standards of Conduct Files—SBA 380,* a system containing information concerning outside employment and financial interests of SBA employees, conduct of SBA employees, and related matters.

(b) *Privacy Act provisions from which exempt.* The systems of records described in this section are exempt from subsections (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(1), 4G, H, and I (Agency Requirements), and (f) (Agency Rules) of 5 U.S.C. 552a.

(c) *Reasons for exemptions.* The systems of records described in this section are exempt for one or more of the following reasons:

(1) To prevent the subject of investigations from frustrating the investigatory process.

(2) To protect investigatory material compiled for law enforcement purposes.

(3) To fulfill commitments made to protect the confidentiality of sources and to maintain access to necessary sources of information.

(4) To prevent interference with law enforcement proceedings.

[41 FR 43712, Oct. 4, 1976]

§ 102.36 Judicial review.

Any individual may bring a civil action against the Agency in a district court of the United States as provided by 5 U.S.C. 552a(g)(1) whenever the Small Business Administration:

(a) Makes a final determination under § 102.30 not to amend an individual's record in accordance with his or her request, or fails to make such review in conformity with that section;

(b) Makes a final determination under § 102.27 to refuse a request to gain access to a record;

(c) Fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(d) Fails to comply under any other provision of 5 U.S.C. 552a or any Agency rule or regulation promulgated thereunder, in such a way as to have an adverse effect on an individual.

PART 103—APPEARANCES AND COMPENSATION OF PERSONS APPEARING BEFORE SBA

Sec.

103.13 Statutory provisions.
103.13-1 Purpose.
103.13-2 Definitions.
103.13-3 Appearance.
103.13-4 Suspension or revocation of the privilege to appear.
103.13-5 Interpretation of "good cause".
103.13-6 Compensation allowable to agents.

Authority: Secs. 5, 13, 72 Stat. 385, 394 (15 U.S.C. 634, 642).

Source: 28 FR 3776, Apr. 18, 1963, unless otherwise noted.

§ 103.13 Statutory provisions.

Sec. 13. No loan shall be made or equipment, facilities, or services, furnished by the Administration under this Act to any business enterprise unless the owners, partners, or officers of such business enterprise (1) certify to the Administration the names of any attorneys, agents, or other persons engaged by or on behalf of such business enterprise for the purpose of expediting applications made to the Administration for assistance of any sort, and the fees paid or to be paid to any such person; (2) execute an agreement binding any such business enterprise for a period of two years after any assistance is rendered by the Administration to such business enterprise, to refrain from employing, tendering any office or employment to, or retaining for professional services, any person who, on the date such assistance or any part thereof was rendered, or within one year prior thereto, shall have served as an officer, attorney, agent, or employee of the Administration occupying a position or engaging in activities which the Administration shall have determined involve discretion with respect to the granting of assistance under this Act; and (3) furnish the names of lending institutions to which such business enterprise has applied for loans together with dates, amounts, terms, and proof of refusal.

§ 103.13-1 Purpose.

The regulations in this part are promulgated to aid in the orderly administration of the Small Business Act and to interpet and apply section 13 in a manner consistent with the intent and purpose of Congress.

§ 103.13-2 Definitions.

For purposes of this part:

(a) "Administrator" shall mean the Administrator of the Small Business Administration.

(b) "Agent" shall include attorneys, accountants, consultants, manufacturers' representatives, and any other persons acting in a representative capacity.

(c) The term "appear before SBA" shall include (1) the preparation or submission on behalf of an Applicant of applications for financial assistance, assistance from the Investment Division of SBA, and assistance in procurement and technical matters; (2) conferences or other communications on behalf of an Applicant with officers or employees of SBA; (3) participation on behalf of another in any matter before SBA.

(d) "Applicant" shall mean any person, firm, concern, corporation, partnership, cooperative or other business enterprise applying or making application for, or receiving assistance from SBA.

§ 103.13-3 Appearance.

(a) *Personal appearance.* Any individual Applicant or member of an Applicant partnership may appear for himself or for such partnership, and any Applicant corporation may be represented by a bona fide officer of the corporation.

(b) *Appearance by agents.* Any Applicant may appear before SBA by an attorney at law admitted to practice and in good standing before any of the Federal courts of the United States or the highest court of any State or Territory of the United States, or by any competent person of good moral character and of good repute who is a citizen of the United States or who has declared his intention to become such citizen, if not prohibited by law or the regulations in this part from appearing before SBA in behalf of such Applicant.

(c) *Evidence of agent's authority.* SBA may request of any Agent written evidence of the nature and extent of his authority to act on behalf of an Applicant. SBA may refuse to reveal any information concerning any SBA assistance applied for or received by any Applicant to any person whose relationship with the Applicant is no clearly demonstrated in writing.

§ 103.13-4 Suspension or revocation of th privilege to appear.

The Administrator, for good caus (see § 103.13-5), may suspend, pendin a hearing and decision, the privilege o any Applicant or Agent, to appea before SBA, and may also revoke such privilege of any Applicant or Agent, in accordance with procedures containe in Part 134 of this chapter. The Assistant Administrator of the Office o Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of § 134.34.

[28 FR 3776, Apr. 18, 1963, as amended at 49 FR 33628, Aug. 24, 1984]

§ 103.13-5 Interpretation of "good cause".

Section 103.13-4 provides that the Administrator, for good cause, may suspend or revoke the privilege of any Agent or Applicant to appear before SBA. "Good cause" as used in this connection will be deemed to mean any unlawful or unethical activity. The following acts would constitute "good cause"; these are illustrative only and "good cause" is not necessarily limited to the following:

(a) *Inducement.* Inducing or attempting to induce by gifts, or offer thereof, promises, bribes or otherwise, any officer or employee of SBA to take any action with respect to any matter before SBA.

(b) *Solicitation.* Requesting or suggesting directly or through any agency or medium the employment of the person making or initiating the request or suggestion, or some other person to perform work in connection with an application. "Solicitation" shall include, but shall not be limited to, requests or suggestions which violate the ethics, customs, or regulations of the profession or business of the person or persons making or initiating the suggestions; requests or suggestions which imply or infer that the work to be performed or any portion thereof, will be of a political, influential, or similar nature; and any advertisement or representation that contains or uses the words "Small Business Administration" or "SBA", or any symbol thereof.

(c) *Fees or charges.* Charging or proposing to charge for any services performed in connection with matters before SBA (as defined in § 103.13-2(c) any fee contingent upon the granting of any benefit to the Applicant unless the amount of such fee bears a necessary and reasonable relationship to the services actually performed; any fee which is deemed by SBA to be unreasonable for the services actually performed; or the charging of any expenses which are not deemed by SBA to have been necessary in connection with the application. This provision will not be construed to limit the right of SBA to require the execution by any person of an agreement as to compensation for services rendered, or to be rendered, to Applicants in connection with any matter before SBA, as provided for in § 103.13-6.

(d) *Violation of compensation agreement.* Violation of any compensation agreement, provided for in § 103.13-6.

(e) *Violations of rules or regulations.* Knowingly violating or participating in the violation of any rules or regulations of SBA, including the making, or inducing of another to make, any false representations to influence or facilitate the granting of any benefit to Applicant, in violation of the Small Business Act, as amended, the Small Business Investment Act of 1958, or any rules or regulations issued thereunder.

(f) *Lack of good moral character.* A course of conduct, past or present, which indicates that the person challenged is lacking in integrity or decorum, or has no respect for law and order, or which indicates that the Agent might submit unreliable information or evidence to SBA in connection with matters on which he is employed.

[28 FR 3776, Apr. 18, 1963, as amended at 40 FR 59425, Dec. 24, 1975]

§ 103.13-6 Compensation allowable to agents.

SBA reserves the right to require any Agent or Applicant to execute an agreement governing the compensation charged for services rendered or to be rendered to such Applicant in any matter coming before SBA. Such agreement will provide, among other things, (a) that if the amount of compensation charged for any such services shall not be deemed reasonable by SBA, such Agent will reduce the charge for such services to such amount as shall be deemed reasonable by SBA, and will not, directly or indirectly, charge or collect from the Applicant or any other person, for such services, any sum in excess of the amount deemed reasonable by SBA; (b) that if such Agent has heretofore collected from the Applicant, or any other person, as compensation for any such services any amount deemed unreasonable by SBA, such Agent will refund to Applicant or such other person such sums as are in excess of the amount deemed reasonable by SBA.

PART 105—STANDARDS OF CONDUCT

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AUTHORITY: Sec. 5, 72 Stat. 385 (15 U.S.C. 634); E.O. 11222, 3 CFR 1964-65 Comp.; 5 CFR 735.104.

SOURCE: 41 FR 29656, July 19, 1976, unless otherwise noted.

§ 105.101 Purpose and scope.

(a) This part prescribes standards of conduct for current SBA employees and former SBA employees, relating to possible conflicts between their official duties or the public interest and their private interests.

(b) Except as otherwise noted, this part deals with SBA administrative standards and does not purport to be interpretative of requirements imposed by analogous criminal statutes or regulations or directions of other proper authorities. For example, interpretations with respect to criminal statutes normally should be obtained from the Department of Justice.

[47 FR 12334, Mar. 23, 1982]

§ 105.201 Definitions.

(a) "SBA" means the Small Business Administration.

(b) "Administrator" means the Administrator of the Small Business Administration.

(c) "Employee" means an officer or employee of the Small Business Administration, regardless of his grade, status or place of employment, including employees on leave with pay or on leave without pay other than those on extended military leave. Unless stated otherwise, "Employee" shall include those within the category of "Special Government Employee."

(d) "Special Government Employee" means an officer or employee of SBA, who is retained, appointed or employed to perform temporary duties on a full-time or intermittent basis, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days.

(e) "Government" means the Government of the United States.

(f) "Person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

(g) "Member of household" means (1) spouse and minor children of an employee; and (2) all blood relations of the employee and of his spouse who reside in the same place of abode with the employee.

(h) The use of the masculine gender throughout this part shall mean masculine or feminine.

(i) "SBA Assistance" means financial, contractual, grant, managerial or other aid, including size, section 8(a) or other eligibility determinations granted by SBA under applicable law. For the purposes of this part, this term shall also include an express decision to compromise or defer possible litigation or other adverse action.

(j) "Department" means any department, agency, independent establishment or wholly-owned corporation of the U.S. Government.

(k) "Standards of Conduct Committee" is that administrative body within SBA which administers and interprets standards of employee conduct. Its function and composition are explained in § 105.801 herein.

(l) "Senior Employee" means an SBA employee paid at the Executive Level pursuant to subchapter 11 of Chapter 53 of Title 5, U.S.C. and any other employee, GS-17 or above or a member of the Senior Executive Service who has significant decisionmaking or policy responsibilities and is so designated by the Director, Office of Government Ethics pursuant to 18 U.S.C. 207(d).

[41 FR 29656, July 19, 1976, as amended at 47 FR 12334, Mar. 23, 1982]

§ 105.301 General requirements.

(a) No employee in the conduct of official business shall grant preferential treatment to or discriminate against any person.

(b) In the performance of official duties, the interest of the Government is paramount and takes precedence over the private pecuniary and other interests of all employees and third parties.

(c) In the conduct of official business, the personal opinions of every employee must be subordinated to established Government policy and SBA procedures. No employee shall substitute his personal opinions or judgments for established Government policy.

(d) No employee shall engage in criminal, infamous, dishonest, immoral, disgraceful or other conduct prejudicial to the Government.

(e) Every employee shall conduct himself in such a manner that the work of SBA will be effectively and efficiently accomplished.

(f) Every employee shall observe the full requirements of courtesy, consideration and promptness in performing his official duties.

(g) No employee shall use public office to obtain or coerce private gain for himself or any other person.

(h) No employee shall make a Government decision outside official channels.

(i) No employee shall take any action which would adversely affect the confidence of the public in the integrity of the Government.

RESTRICTIONS RELATING TO FORMER SBA EMPLOYEES

§ 105.401 Acting as representative in matter previously under official responsibility of former employee.

No former employee may, within two years after his employment with SBA has ceased, appear before SBA or in any proceeding conducted by or on behalf of SBA, or in which SBA has an interest, as agent, attorney or representative, or make any oral or written communications to SBA with intent to influence, in connection with any claim, determination or other specific matter which was under his official responsibility within one year prior to the termination of his employment.

[47 FR 12334, Mar. 23, 1982]

§ 105.402 Acting as representative in matter in which former employee personally participated.

No former employee may ever, after his employment with SBA has ceased, appear as agent, attorney or representative before SBA or in any proceeding conducted by or on behalf of SBA, or in which SBA has an interest, or make any oral or written communication to SBA with intent to influence, in connection with any claim, determination or other specific matter in which he participated personally and substantially while an employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise.

[47 FR 12334, Mar. 23, 1982]

§ 105.403 Employment of former employee by person previously the recipient of SBA assistance.

No former employee, who occupied a position involving discretion or who exercised discretion with respect to the granting of SBA assistance or the administration of such assistance, may accept or retain a position as employee, partner, agent, attorney or otherwise with a concern which has received this SBA assistance for a period of two years following the date of such assistance if—

(a) The date of such assistance or such administrative act with respect thereto was within the period of the employee's term of employment, or;

(b) The date of such assistance or such administrative act with respect thereto was within one year following the termination of such employment.

Failure of a recipient of SBA assistance to comply with these provision may result, in the discretion of SBA, in the requirement for immediate repayment of SBA financial assistance, the immediate termination of other assistance involved or other appropriate action.

[41 FR 29656, July 19, 1976, as amended at 47 FR 12334, Mar. 23, 1982]

§ 105.404 SBA assistance to person employing former SBA employee.

(a) SBA shall not provide assistance to any person who has as an employee, owner, partner, attorney, agent, owner of stock, officer, director, creditor or debtor, any individual who, within one year prior to the request for such assistance was an SBA employee, without the prior approval of the Standards of Conduct Committee.

(b) In reviewing applications for assistance, the Standards of Conduct Committee will consider:

(1) The relationship of the former employee with the applicant concern;

(2) The nature of the SBA assistance requested;

(3) The position held by the former employee with SBA and its relationship to the assistance requested; and

(4) The appearance of a possible conflict of interest that might arise if the assistance were granted.

[41 FR 29656, July 19, 1976, as amended at 47 FR 12334, Mar. 23, 1982]

§ 105.405 Personal appearance by former Senior Employee in matter in which he personally participated.

No former SBA Senior Employee may, within two years after his employment has ceased, assist by personal presence, another person in representations in any formal or informal appearance before SBA or in any formal or informal proceeding conducted by or on behalf of SBA, or in which SBA has an interest, in connection with any claim, determination or other specific matter in which he participated personally and substantially while an SBA Senior Employee through decision, approval, disapproval, recommendation, the rendering of advice or otherwise.

[47 FR 12334, Mar. 23, 1982]

§ 105.406 Involvement by former Senior Employee in SBA decisional matters.

No former SBA Senior Employee may, within one year after his employment has ceased, make any formal or informal appearance before SBA or in any proceeding conducted by or on behalf of SBA as agent, attorney or representative or make any oral or written communication to SBA with intent to influence, in connection with any matter, whether or not dealing with a particular person or particular persons, which involves a decision, ruling, approval, disapproval, investigation, rulemaking or similar determination by SBA.

[47 FR 12334, Mar. 23, 1982]

§ 105.407 Proceedings for debarment from appearances before SBA for violations of post employment restrictions contained in 18 U.S.C. 207 (a), (b) and (c).

(a) SBA may, in accordance with section 207(j) of 18 U.S.C. (included in the Ethics in Government Act of 1978, Pub. L. 95-521, as amended), as an administrative penalty for violation of 18 U.S.C. 207 (a), (b) or (c), prohibit a former SBA employee from making, on behalf of any other person, any informal or formal appearance before or, with intent to influence, any oral or written communication to SBA on a pending matter for a period not to exceed five years, or take other appropriate disciplinary action. SBA administrative proceedings for such purpose shall be conducted in accordance with the provisions of Part 134 of this chapter. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of § 134.34.

(b) The Standards of Conduct Committee (established pursuant to § 105.801) after reviewing all available information, may determine that there is reasonable cause to believe that a former employee (referred to in this section as Respondent) has violated 18 U.S.C. 207 (a), (b), or (c). This determination shall be set forth in a Report (Report) containing the relevant facts and inferences therefrom, and a recommendation for sanctions and/or disciplinary action, within the limitations of paragraph (a) of this section.

(c)(1) A copy of this Report and any appropriate comments will be provided to the Director of the Office of Government Ethics and, in coordination with the SBA Inspector General, to the Criminal Division of the Department of Justice. SBA administrative proceedings will be coordinated with the Department of Justice unless the Department advises SBA that it does not intend to initiate criminal prosecution.

(2) Copies of this Report and all other notices, pleadings, motions and other official documents relative to a proceeding under this section shall be provided by the Standards of Conduct Committee, by the SBA General Counsel, by the Respondent and by any other parties to the SBA Office of Hearings and Appeals. This office will serve as the Docket Office for these proceedings and the documents filed with it will constitute the official files for the proceedings.

[47 FR 12334, Mar. 23, 1982, as amended at 49 FR 33628, Aug. 24, 1984]

§ 105.408 Cross references.

There are statutory provisions which are relevant to the obligations of and restrictions upon former employees. Some of these statutory provisions are:

(a) 18 U.S.C. 207.

(b) 15 U.S.C. 642.

[41 FR 29656, July 19, 1976. Redesignated at 47 FR 12334, Mar. 23, 1982]

RESTRICTIONS RELATING TO PRESENT SBA EMPLOYEES

§ 105.501 Involvement in matters in which Government has substantial interest.

(a) No employee, otherwise than in the proper discharge of his official duties, shall act as agent, attorney or in any other representative capacity before a Department, regardless of whether compensation is received, in connection with any matter in which the United States is a party or has a direct and substantial interest. This provision shall be applicable to a Special Government Employee only to the extent set forth in paragraph (c) of this section.

(b) No employee, or person acting on behalf of said employee, otherwise than in the proper discharge of the employee's official duties, shall receive, agree to receive or solicit compensation for services rendered or to be rendered, in connection with any matter in which the United States is a party or has a direct and substantial interest. This provision shall be applicable to a Special Government Employee only to the extent set forth in paragraph (c) of this section.

(c) A Special Government Employee is subject to the foregoing paragraphs (a) and (b) of this section in connection with a particular matter: (1) In which he has at any time participated personally and substantially or which was under his official responsibility as an employee, or (2) which is pending at SBA while he is serving as a Special Government Employee. This provision (c)(2) does not apply where the Special Government Employee has served no more than 60 days with SBA during the immediately preceding period of 365 consecutive days.

(d) Notwithstanding paragraphs (a), (b) and (c) of this section an employee:

(1) May act, with or without compensation, as agent or attorney for his parents, spouse, child or any person for whom, or any estate for which, he is serving as guardian, executor, administrator, trustee or other personal fiduciary, except in those matters in which he has participated personally and substantially or which were under his official responsibility as an em-

ployee. In order to determine the possibility of any conflict of interest and the appearances of the arrangement, this function must first be reviewed and approved by the Standards of Conduct Committee.

(2) If not inconsistent with the faithful and full performance of his duties, as determined by his supervisor, may act without compensation as agent or attorney for any individual who is the subject of disciplinary, loyalty or other personnel proceedings in connection with those proceedings.

(e) There are statutory provisions which are relevant to the restrictions upon representative functions of a Government employee not performed as part of his official duties. Some of these statutory provisions are:

(1) 18 U.S.C. 203.

(2) 18 U.S.C. 205.

§ 105.502 Compensation relating to official duties from nongovernment source.

(a) No employee shall receive any salary, contribution to or supplementation of salary, as compensation for his services to SBA as an employee from any source other than the Government, except as may be authorized by law.

(b) No employee shall receive, agree to receive, request or solicit anything of value for himself or for any other person in return for committing, or aid in committing, or to colluding in, or allowing, any fraud, or making the opportunity for the commission of any fraud, on the United States or for being induced to do or omit to do any act in violation of his official duty.

(c) No employee shall receive, agree to receive, request or solicit anything of value for himself or any other person, otherwise than as provided by law in the proper discharge of his official duties, to support or influence decisions for the hiring of any person as an employee of SBA or any other Department.

(d) Nothing in this section precludes an employee from accepting travel or subsistence expenses from persons other than the Government in connection with proper outside activities conducted on his own time when such outside activities are approved under these regulations. Such travel or subsistence expenses, however, may n be accepted in connection with offici duties or activities performed at th direction of SBA, except as otherwis authorized by law.

(e) There are statutory provision which are relevant to the obligation o and restrictions upon compensation t employees from nongovernmen sources. Some of these provisions are

(1) 18 U.S.C. 209.

(2) 18 U.S.C. 201.

(3) 18 U.S.C. 211.

(4) Decision of the Comptroller General; March 7, 1967; B-128527.

§ 105.503 Gratuities from persons dealin with SBA.

(a) Except as otherwise permitted in this section, no employee or member of his household shall receive, agree to receive, request or solicit, directly or indirectly, any gift, gratuity, favor, entertainment, loan or any other thing of monetary value from a person who:

(1) Has, or is seeking to obtain directly or as the representative of another, any contractual or other business or financial relations with SBA or any SBA Assistance.

(2) Is a financial institution which participates with SBA in any of its lending or other programs or is an officer, director, agent, representative or significant equity owner of such an institution.

(3) Conducts operations or activities regulated by SBA.

(4) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duties.

(b) The prohibitions of paragraph (a) of this section shall not apply to:

(1) Gifts, entertainment and favors of a relatively nominal value when the circumstances make it clear that it is wholly a personal relationship rather than the business of the persons concerned which are the motivating factors.

(2) The acceptance of food and refreshments of nominal value when:

(i) On infrequent occasions they are provided in the ordinary course of a luncheon or dinner business meeting or other business meeting or on an inspection tour where an employee may properly be in attendance; or

(ii) It is in SBA's interest that an employee attend an event, such as a reception, seminar, conference, or training session, where food or refreshments are being served, provided that, the event is expected to be widely attended and of mutual interest to the Government and the private sector; the food and refreshments offered are not excessive; and the employee obtains prior approval from his immediate supervisor, or in the case of Agency management officials, prior approval from the appropriate Agency Ethics Official. However, where the sponsor of the event is an individual or entity that is directly involved in a matter or matters presently before SBA or otherwise regulated by SBA, the approving official must also determine that the timing of the event or other circumstances surrounding the event do not create a real or apparent conflict of interest.

(3) The acceptance of loans from banks and other financial institutions on customary terms to finance usual activities of employees, such as home mortgage loans;

(4) The acceptance of unsolicited advertising or promotional material, such as pens, pencils, calendars and other items of nominal value.

(c) Generally, an employee may not accept travel or subsistence expenses from a private person while traveling on official business under SBA orders. Payment for such expenses normally is made by SBA in accordance with applicable laws and regulations relating to official travel. Employees faced with questions relating to this rule or exceptions thereto should consult the appropriate SBA Standards of Conduct Counselor.

[41 FR 29656, July 19, 1976 as amended at 53 FR 38941, Oct. 4, 1988]

§ 105.504 Other gifts and gratuities.

(a) No employee shall:

(1) Solicit a contribution from another employee for a gift to an official superior.

(2) Make a donation or gift to or for the benefit of an official superior.

(3) Receive a gift from an employee receiving less pay and having less rank than himself.

(b) The foregoing paragraph (a) of this section does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion, such as marriage, illness, separation or retirement.

(c) No employee shall accept a gift, decoration or other thing from a foreign government except as authorized by statute.

(d) There are statutory provisions relevant to the question of gifts to and from employees. Some of these provisions are:

(1) 5 U.S.C. 7342.

(2) 5 U.S.C. 7351.

§ 105.505 Situations creating a conflict of interest or the appearance thereof.

(a) No employee shall engage in any action, whether or not specifically prohibited, which might result in or create the appearance of:

(1) Using public office to obtain or coerce personal gain for himself or any other person.

(2) Giving preferential treatment to any person.

(3) Impeding Government efficiency or economy.

(4) Losing independence or impartiality.

(5) Making a Government decision outside official channels.

(6) Adversely affecting the confidence of the public in the integrity of the Government.

(b) Employees should be aware that the appearance of a conflict of interest, even absent the existence of any actual conflict, are matters of significant concern in the administration of employee standards of conduct. "Appearances" problems could arise, for example, where an employee is involved in the consideration of SBA assistance to a personal friend, a former supervisor or a similarly situated person, or where an employee is considering a business or commercial transaction with a known applicant for or recipient of SBA assistance, or where an employee is involved, in a personal capacity, in business negotiations with a known applicant for or recipient of SBA assistance. Special care should be taken by each employee to guard against the occurrence of any "appearance" violation of these regulations. Violations may be the basis for SBA disciplinary action. Where there is any question relating to the application of these rules to a particular situation, the employee is required to disqualify himself from any official action which might create such an "appearance" of a conflict of interest until he has received written approval from the appropriate SBA Standards of Conduct Counselor or from the SBA Standards of Conduct Committee.

[41 FR 29656, July 19, 1976, as amended at 47 FR 12336, Mar. 23, 1982]

§ 105.506 Personal interests in firms or matters having SBA involvement.

(a) Except as otherwise provided in paragraph (e) of this section, no employee or member of his household shall purchase, or direct the purchase of, directly or indirectly, any interest in the persons specified in paragraph (c) of this section.

(b)(1) Except as otherwise provided in paragraph (e) of this section, without the approval of the Standards of Conduct Committee, no employee or member of his household shall own or otherwise hold directly or indirectly, whether acquired prior to or during the period of his SBA employment, any interest in the persons specified in paragraph (c) of this section:

(2) Application for approval under this subsection shall be submitted to the Standards of Conduct Committee no later than 60 calendar days after entering upon SBA employment where the employee's interest in the concern arose prior to his SBA employment. Where the interest of the employee arose during the period of his SBA employment, application shall be made no later than 60 calendar days after the acquisition of such interest.

(c) Proscribed persons for the purposes of paragraphs (a) and (b) of this section:

(1) A small business investment company licensed by SBA;

(2) A person for which a small business investment company license application is pending before SBA;

(3) A person which has received SBA Assistance within the preceding 2 years;

(4) A person which presently has outstanding SBA Assistance;

(5) A person which has pending an application for SBA Assistance;

(6) Institutions which participate with SBA in any of its financial assistance programs.

(d) In reviewing applications for approval under paragraphs (b), (f) and (g) of this section, the Standards of Conduct Committee will consider all relevant factors, including:

(1) The relationship between the official SBA function of the employee and the SBA Assistance, decision or other matter in question;

(2) The significance of the employee's or other person's interest in the concern relative to his other assets and/or interests;

(3) The significance of the employee's or other person's interest in the concern relative to the other equity and/or interests in the concern;

(4) Whether the employee's or other person's interest in the concern is substantial regardless of its significance relative to his other assets and/or interests or to the other assets and/or interests of the concern.

(e) Notwithstanding other provisions herein, an employee or member of his household may purchase, direct the purchase of, own or otherwise hold, directly or indirectly, any interest in a person which owns stock or has other interests in a small business investment company licensed by SBA when:

(1) Such employee or member of his household does not participate in the management of or in the selection of investments for or by such person; and

(2) Such employee and/or member of his household does not own 1 percent or more of the equity of, or other interest in, such person; and

(3) The person has not invested more than 10 percent of its assets in small business investment companies licensed by SBA.

(f)(1) Without the prior written approval of the Standards of Conduct Committee, no employee shall participate as an SBA employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise in any claim, determination or other matter in which he, a member of his household, a partner, an organization in which he has an ownership, employment or other interest or any person with whom he has an arrangement or is arranging for prospective employment, has an interest.

(2) In reviewing applications for approval under this provision, the Standards of Conduct Committee will include as guidelines the criteria set forth in paragraph (d) of this section.

(3) In addition to the foregoing, where the interest of the employee is a financial interest, he shall not participate in the matter in question without also obtaining an advance written determination from the Administrator that such financial interest is not so substantial that it is likely to affect the integrity of the services which the Government may expect from such employee.

(4) There are statutory provisions relevant to the question of employee participation in official matters in which he has an interest. These include 18 U.S.C. 208.

(g)(1) Without the prior written approval of the Standards of Conduct Committee, no SBA assistance, other than Disaster loans under subparagraphs (1) and (2) of section 7(b) of the Small Business Act, shall be furnished to a person when the sole proprietor, partner, officer, director or significant stockholder is an SBA employee or a member of his household.

(2) In reviewing applications for approval under this provision, the Standards of Conduct Committee will include the guidelines set forth in paragraph (d) of this section.

§ 105.507 Use of Government property and supplies.

(a) No employee shall use Government property or supplies of any kind except for officially approved activities. This prohibition includes the use of a Government vehicle and the use of official penalty mail.

(b) Every employee also has a positive responsibility to protect and conserve all Government property and supplies entrusted to him.

(c) There are statutory provisions relating to the use of Government property and supplies. These include:

(1) 31 U.S.C. 638(a) relates to the use of Government vehicles.

(2) 39 U.S.C. 3202, 3203 relates to the use of official penalty mail.

§ 105.508 Conversion of public and other property.

(a) No employee shall convert or attempt to convert to his own use money or property of another coming into his possession or public monies or property.

(b) There are statutory provisions concerning embezzlement and conversion. These include:

(1) 18 U.S.C. 643.

(2) 18 U.S.C. 654.

(3) 15 U.S.C. 645.

§ 105.509 Distortion of records; false statements.

(a) No employee shall:

(1) While acting as an SBA employee, make false records or accounts.

(2) Falsify any record, account, paper or other thing filed with or relating to Government or other public business.

(3) Remove, obliterate or destroy any record, account, paper or other thing filed with or relating to Government or other public business.

(4) While acting as an SBA employee, knowingly make any false statement to the detriment of the Government or another employee.

(5) Attempt to effect any of the foregoing.

(b) There are statutory provisions concerning the distortion of public records. These include:

(1) 18 U.S.C. 2071.

(2) 18 U.S.C. 2073.

(3) 15 U.S.C. 645(a).

§ 105.510 Outside employment and activities.

(a) Except with the written approval of the appropriate agency official as noted in paragraph (b) of this section, no employee shall engage in any outside business, employment, occupation or similar activity. This limitation applies regardless of whether a fee, gift, salary or other compensation is received for the activity.

(b) Requests for approval under this section shall be submitted as follows:

(1) For employees of SBA offices, other than the Central Office, all submittals shall initially be made to the Regional Standards of Conduct Counselors, noted in § 105.802 of this regulation.

(i) Requests by employees below the level of GS-13 and relating to outside activities of a noncontroversial, low visibility nature having no apparent connection with SBA activities, having no significant "appearances" problems, and involving no apparent interference with the performance of official duties or official time shall be resolved by the Regional Standards of Conduct Counselor. Copies of these written decisions will be forwarded to the Agency Standards of Conduct Counselor noted in § 105.802.

(ii) All other SBA field office requests shall be reviewed by the Regional Standards of Conduct Counselor and forwarded with his written recommendations to the Agency Standards of Conduct Counselor for preparation and submittal for decision to the SBA Standards of Conduct Committee pursuant to § 105.801.

(2) For employees of SBA's Central Office, all submittals shall initially be made to the Agency Standards of Conduct Counselor, noted in § 105.802.

(i) Requests by employees below the level of GS-15 and relating to outside activities of a noncontroversial, low visibility nature, having no apparent connection with SBA activities, having no significant "appearances" problems, and involving no apparent interference with the performance of official duties or official time shall be resolved by the Agency Standards of Conduct Counselor.

(ii) All other SBA Central Office requests shall be prepared by the Agency Standards of Conduct Counselor for submittal to and decision by the Standards of Conduct Committee pursuant to § 105.801.

(3) It is contemplated that the Committee will decide all requests for outside activity approval that involve a significant appearances issue (see § 105.505), situations of a controversial nature, situations having a high public visibility, activities that would involve a significant interaction with SBA or other governmental units, activities involving interference with the official functions of the employee and situations involving high-ranking Agency officials who have wide discretionary authority with respect to the granting and administration of SBA assistance.

(c) In reviewing applications for approval under this section, all relevant factors will be considered, including:

(1) Where there is a fee, gift or other compensation whether it might result in, or create the appearance of, a conflict of interest;

(2) Whether the outside activity would tend to impair an employee's mental or physical capacity to perform his Government duties and responsibilities in an acceptable manner;

(3) Whether the outside activity will occur during the employee's duty hours;

(4) Whether, in the course of his outside activity, the employee might have occasion to discuss the business or affairs of any SBA applicant for or recipient of assistance;

(5) Whether the employee's name and/or his position with SBA will be used in any advertisement, promotion or letterhead in connection with the outside activity;

(6) Whether the outside activity could create the appearance of a conflict of interest or otherwise adversely affect the confidence of the public in the integrity of the Government;

(7) Whether the outside activity is otherwise not compatible with the full and proper discharge of the duties and responsibilities of his Government employment.

(d) Unless otherwise limited by law or this regulation, employees are encouraged to engage in outside teaching, lecturing and writing. Such outside activity, however, shall not be approved if it is dependent on disclosure of information obtained as a result of the employee's Government employment, unless:

(1) The information has been made available to the general public or will be made available upon request; or

(2) The Administrator of SBA makes a written determination that the use of nonpublic information is in the public interest.

(e) The section does not preclude an employee from:

(1) Participation in political activities not otherwise proscribed by law. Employees should, however, be aware of the limitations upon such activities set forth in Subchapter III of Chapter

73 of Title 5, United States Code and § 105.512 of these regulations.

(2) Participation in the affairs of, including the acceptance of a public service award from, a charitable, professional, social, civic or similar organization.

[41 FR 29656, July 19, 1976, as amended at 44 FR 27073, May 9, 1979; 47 FR 12336, Mar. 23, 1982; 47 FR 17804, Apr. 26, 1982]

§ 105.511 Financial disclosure statements under Executive Order 11222.

(a) Financial disclosure statements under Executive Order 11222 (May 8, 1965) are required from the following SBA employees:

(1) All Regional Administrators, District Directors, and Branch Managers, except those who file a Financial Disclosure Report under § 105.512.

(2) All other employees who are in positions of discretion involving the granting of SBA Assistance as defined in § 105.201(i). These positions generally are those in which employees take final action on behalf of the Agency or make recommendations frequently adopted as final Agency action or take actions or make frequently adopted recommendations immediately leading to final Agency action regarding contracting, regulating or licensing small business investment companies, granting financial assistance, issuing certificates of conpetency or making size determinations. The determination of which positions fall within this category shall be made pursuant to paragraph (d)(1) of this section. These determinations will be reviewed by the appropriate Standards of Conduct Counselors.

All employees in the Senior Executive Service and those paid at GS-16 or above level are required to file a Financial Disclosure Report under § 105.512 of these regulations pursuant to the Ethics in Government Act of 1978. These employees and any others who file under that Act are not required to file under this paragraph (a)(2).

(b) These statements shall:

(1) Include interests of members of an employee's household;

(2) Be submitted on the behalf of the employee by a trustee or other person where the required information is not known by the employee but is known by such trustee or other person;

(3) Contain the information required by Subchapter 4 and Appendix D of Part 735 of the Federal Personnel Manual. Agency forms may be obtained from the Office of Personnel or field administrative officers; and

(4) Include all financial and outside employment interests, except that information is not required relating to an employee's connections, as a member, with a charitable, professional, social, civic, political or similar nonbusiness enterprise. For the purposes of this provision, an educational or other organization, doing research and development or related work involving Government grants or contracts is deemed, to that extent, as a "business enterprise" and as such must be included in the employee's statement.

(c) Statements shall be submitted by an employee within 30 days after assuming a position subject to this section. In addition, an annual report is required as of June 30 of every year and shall be submitted no later than July 31 of every year. If no changes from the prior report occur, a negative report is required.

(d)(1) Determinations regarding who is required to submit a statement under paragraph (a)(2) of this section shall be made by the appropriate Associate Administrator, Assistant Administrator, the Inspector General, Regional Administrator, the General Counsel, the Deputy Administrator and any other Office Director not subject to any of the foregoing office directors for those employees under their respective jurisdiction. The covered employees shall thereupon be notified by their respective office directors designated above. These determinations shall also be submitted by the office director to the appropriate SBA Standards of Conduct Counselor no later than June 30 of each year.

(2) Any employee who contends that he is improperly required to file a Financial Disclosure Statement under this section may request a review of his complaint under an SBA grievance procedure. Advice concerning SBA grievance procedures may be obtained from the SBA Office of Personnel.

(e) Statements required by this section and determinations required under paragraph (d) of this section shall be submitted:

(1) To the SBA Standards of Conduct Counselor with respect to Central Office employees;

(2) To the Regional Standards of Conduct Counselor with respect to employees within his region except that statements required from the Regional Standards of Conduct Counselor shall be submitted to the SBA Standards of Conduct Counselor.

(f)(1) The appropriate Standards of Conduct Counselor shall review the statements submitted to him to determine the existence of any possible conflicts or appearances of possible conflicts. Where such a conflict exists or appears to exist, the Counselor shall provide the employee an opportunity to explain.

(2) In the event the real or apparent conflict cannot be resolved by the Standards of Conduct Counselor, the matter shall be submitted to the Standards of Conduct Committee. The Committee shall investigate and analyze the problem and then report the matter, together with its recommendations to the Administrator.

(3) If the Administrator determines that the employee has an interest conflicting with his official duties, he may direct remedial action which may include, but is not limited to:

(i) Changes in assigned duties;

(ii) Divestment by the employee of his conflicting interests;

(iii) Disqualification for particular assignments;

(iv) Disciplinary action.

(g) Each Statement of Employment and Financial Interests shall be held in confidence by the recipient and no information contained therein shall be disclosed except as the Administrator may determine for good cause shown, or to those individuals who must have access in order to carry out responsibilities under law upon request to the appropriate Standards of Conduct Counselor.

(h)(1) The statements required herein are not a substitute for, or in derogation of, any similar requirement imposed by law, order or regulation.

(2) The filing of a statement herein in no way permits an employee or any other person to participate in any matter, make or hold any investment or engage in any activity prohibited or restricted by law, order or regulation.

(3) Notwithstanding the filing of a statement herein, every employee at all times shall avoid acquiring a financial interest or taking any action that could result in a conflict or otherwise in a violation of this regulation or any other law, order or regulation.

[41 FR 29656, July 19, 1976, as amended at 47 FR 12336, Mar. 23, 1982; 52 FR 34896, Sept. 16, 1987]

§ 105.512 Financial disclosure statements under the Ethics in Government Act of 1978.

(a) Financial Disclosure Statements under the Ethics in Government Act of 1958 (Pub. L. 95-521 as amended) are required from the following SBA employees. Those who file under this provision are not required to file under § 105.511 of this regulation:

(1) The Administrator, the Inspector General, and the Chief Counsel for Advocacy.

(2) All SBA employees in the Executive Schedule.

(3) All SBA employees paid at the GS-16 or above in the General Schedule or at an equivalent rate for other pay schedules. This will include all members of the Senior Executive Service.

(4) Administrative Law Judges, regardless of grade.

(5) Employees in the excepted service in positions which are of a confidential or policymaking character, regardless of grade (except that the Director of the Office of Government Ethics may exclude individuals or groups of individuals where the Director determines such exclusion would not adversely affect the integrity of the Government nor the confidence of the public in that integrity).

(6) The Designated Agency Ethics Officials described in § 105.803.

(b) These statements shall be filed on the form prescribed by the Office of Government Ethics. Forms are available from SBA's Designated Agency Ethics Officials.

(c) These statements shall be filed with SBA's Designated Agency Ethics

Officials within time frames specified by him.

(d) The general policies, special provisions, requirements for reporting by trusts, procedures and other matters relating to these statements and their filing by SBA employees are set forth in 5 CFR Part 734. These are regulations promulgated by and, from time to time, amended by the Office of Government Ethics. Employees should be cognizant of these regulations in assessing their obligations regarding these Financial Disclosure statements.

[47 FR 12337, Mar. 23, 1982]

§ 105.513 Political activity of employees.

(a) No employee shall use his official authority to coerce or influence the political action of any person.

(b) No employee shall use his official authority or influence for the purpose of interfering with or affecting the result of an election or the nomination of a candidate for an election.

(c) No employee, except the Administrator or the Chief Counsel for Advocacy, shall take an active part in political management or political campaigns within the meaning of 5 U.S.C. 7324 and 5 CFR Part 733.

(d) There are statutory provisions concerning political activity of employees. These include:

(1) Title 5, Subchapter III, Chapter 73, United States Code.

(2) 18 U.S.C. 595.

[41 FR 29656, July 19, 1976. Redesignated and amended at 47 FR 12337, Mar. 23, 1982]

§ 105.514 Striking against Government.

(a) No employee shall strike against the Government.

(b) There are statutory provisions concerning strikes against the Government. They include:

(1) 18 U.S.C. 1918.

(2) 5 U.S.C. 7311.

[41 FR 29656, July 19, 1976. Redesignated at 47 FR 12337, Mar. 23, 1982]

§ 105.515 Disclosure of official information.

(a) No employee shall disclose any official information not authorized by law relating to trade secrets, processes, operations, statistical or income data or other confidential information of any person or firm.

(b) No employee shall disclose any unauthorized information concerning any SBA plan or action which will or might affect the value of securities.

(c) No employee shall utilize unauthorized or "inside" information to invest or speculate directly or indirectly, or otherwise to advance his or another's private interests. For the purposes of this section, "inside information" means information obtained under Government authority which has not become part of the body of public information.

(d) No employee shall disclose any classified information, as defined in Part 137 of these regulations, to unauthorized persons.

(e) The disclosure of official government information, including classified information, is governed by statutory and other authority. Such authorities include:

(1) 5 U.S.C. 552, the Freedom of Information Act;

(2) 5 U.S.C. 552a, the Privacy Act;

(3) 15 U.S.C. 645(b), the Small Business Act;

(4) 18 U.S.C. 798, Act of October 31, 1951;

(5) 18 U.S.C. 1905, the Trade Secrets Act;

(6) 50 U.S.C. 783, the Subversive Activities Control Act; and

(7) Executive Order 12356, "National Security Information," and National Security Decision Directive 84, "Safeguarding National Security Information."

[41 FR 29656, July 19, 1976. Redesignated at 47 FR 12337, Mar. 23, 1982, and amended at 49 FR 4371, Feb. 6, 1984]

§ 105.516 Duty to report irregularities.

(a) Every employee shall immediately report to the SBA Inspector General any acts of malfeasance or misfeasance or other irregularities, either actual or suspected, arising in connection with the performance by SBA of any of its official functions.

(Sec. 5 of the Small Business Act, 72 Stat. 384 (15 U.S.C. 631 et seq.) and E.O. 11222, 3 CFR 1964-65 Comp.; 5 CFR 735.104)

[43 FR 3078, Jan. 23, 1978. Redesignated and amended at 47 FR 12337, Mar. 23, 1982]

§ 105.517 Applicable rules and directions.

(a) Every employee shall follow all agency rules, regulations, operating procedures, instructions and other proper directions in the performance of his official functions.

[41 FR 29656, July 19, 1976. Redesignated at 47 FR 12337, Mar. 23, 1982]

§ 105.518 Gambling.

(a) No employee, while on official duty or on Government owned or leased property, shall participate in or operate any gambling activity.

(b) This prohibition shall not apply to activities conducted by employee welfare or similar organizations if prior written approval therefor is obtained from the Director of Personnel.

[41 FR 29656, July 19, 1976. Redesignated at 47 FR 12337, Mar. 23, 1982]

§ 105.519 Payment of financial obligations.

(a) Each employee shall pay his just financial obligations in a proper and timely manner. This is especially important in the case of Federal, State and local taxes.

(b) For the purposes of this provision, "just financial obligations" means those acknowledged by the employee, reduced to judgment by a court or imposed by law such as Federal, State or local taxes. In the event of a dispute, SBA will not determine the validity or amount of a debt.

(c) For the purposes of this provision, "in a proper and timely manner" means a manner which does not reflect adversely upon SBA, the Government or the employee in his official capacity.

[41 FR 29656, July 19, 1976. Redesignated at 47 FR 12337, Mar. 23, 1982]

§ 105.520 Recommendations of private person.

(a) No employee shall recommend or suggest the use of any nongovernmental person to provide any service as agent, attorney or otherwise in connection with negotiations with or other involvement with SBA. This regulation does not preclude an employee from providing a list of nongovernmental entities which participate or evince an interest in participating in SBA assistance programs where the purpose is solely to assist current or potential applicants or recipients of SBA assistance and where it is made clear that no recommendations or certification as to quality of service, ability or other attributes is involved.

[41 FR 29656, July 19, 1976. Redesignated and amended at 47 FR 12337, Mar. 23, 1982]

RESTRICTIONS RELATING TO OFFICERS OR EMPLOYEES OF OTHER GOVERNMENT OR QUASI-GOVERNMENT ORGANIZATIONS

§ 105.601 Assistance to officers or employees of other Government organizations.

(a) Except as noted in paragraph (b) of this section no SBA Assistance, other than Disaster loans under subparagraphs (1) and (2) of section 7(b) of the Small Business Act, shall be furnished to a person when its sole proprietor, partner, officer, director or stockholder with a 10 percent or more interest, or a member of his household, is an employee of another Government department having a grade of GS-13 or its equivalent or higher in the case of civilian employees, or the rank of major or lieutenant commander or its equivalent or higher in the case of military personnel, without a prior written statement of no objection by the pertinent department or military service.

(b) Except in special circumstances approved by the Standards of Conduct Committee, SBA will not enter into a contract with a person when its sole proprietor, partner, officer, director or stockholder with a 10 or more percent interest, or a member of his household, is an employee of a Government agency. In this connection, also see 41 CFR 1-1.302.3.

(c)(1) Without the approval of the Standards of Conduct Committee, no SBA assistance, other than disaster loans under subparagraphs (1) and (2) of section 7(b) of the Small Business Act, shall be furnished to a person:

(i) When its officer, director or stockholder with a 10 percent or more interest, or a member of his household, is a member of Congress;

(ii) When its sole proprietor, partner, officer, director or stockholder with a 10 percent or more interest, or a member of his household, is an appointed official or employee of the legislative or judicial branch of the Government.

(2) There are statutory provisions relevant to the question of assistance to officials of the United States Government. These include:

(i) 18 U.S.C. 431.

(ii) 18 U.S.C. 433.

(iii) 41 U.S.C. 22.

[41 FR 29656, July 19, 1976, as amended at 47 FR 12337, Mar. 23, 1982]

§ 105.602 Assistance to employees or members of quasi-Government organizations.

(a) Without the prior written approval of the Standards of Conduct Committee, no SBA Assistance other than Disaster loans under subparagraphs (1) and (2) of section 7(b) of the Small Business Act, shall be furnished to a person when its sole proprietor, partner, officer, director or stockholder with a 10 percent or more interest, or a member of his household, is a member or employee of a Small Business Advisory Council or is a SCORE or ACE volunteer.

(b) In reviewing applications for approval under this provision, the Standards of Conduct Committee may consider, among other factors, the possibilities that the granting of the assistance might result in or create the appearance of giving preferential treatment, the loss of complete independence or impartiality or adversely affecting the confidence of the public in the integrity of the Government.

§ 105.701 Penalties.

Any employee guilty of violating any of the provisions in this regulation may be subject to disciplinary action, including dismissal or suspension from SBA employment, in addition to other penalties provided by law.

§ 105.801 Standards of Conduct Committee.

(a) The Standards of Conduct Committee shall:

(1) Advise and give direction in the administration of this regulation and any other rules, regulations or directives dealing with conflicts of interest and ethical standards of SBA employees;

(2) Make decisions on specific requests for guidance from Agency management officials in connection with matters relating to standards of conduct;

(b) The Standards of Conduct Committee shall be comprised of:

(1) The General Counsel or, in his absence, the Deputy General Counsel or, in his absence, the Acting General Counsel who shall act as Chairman of the Committee;

(2) The Assistant Administrator for Administration or, in his absence, the Director of Labor Relations; and

(3) The Director of Field Management or, in his absence, the Deputy Director of Field Management.

[41 FR 29656, July 19, 1976, as amended at 44 FR 27073, May 9, 1979; 47 FR 12337, Mar. 23, 1982]

§ 105.802 Standards of Conduct Counselors.

(a) The SBA Standards of Conduct Counselor shall be the Deputy General Counsel. He shall be assisted by a Regional Standards of Conduct Counselor for each SBA Region. The Regional Counsel shall be the Regional Standards of Conduct Counselor for each Region.

(b) The SBA Standards of Conduct Counselors or their delegatees shall:

(1) Provide general advice, assistance and guidance to employees concerning these regulations;

(2) "Monitor the Standards of Conduct Program within their respective areas and provide required reports thereon; and"

(3) Review Statements of Employment and Financial Interests as required under § 105.511 herein. Each Regional Standards of Conduct Counselor shall provide an annual report on filing requirements and compliance therewith within his Region to the Associate General Counsel for General Law as of September 1 of each year.

(4) Provide Outside Employment and Activities decisions pursuant to § 105.510 of this regulation.

(c) Each employee shall be periodically informed by the Director of his office of the name, address and telephone number of the Standards of Conduct Counselor whom he may contact for advice and assistance.

(d) Where a specific ruling regarding a particular situation is required, the request should be directed through the Standards of Conduct Counselor to the Standards of Conduct Committee.

[41 FR 29656, July 19, 1976, as amended at 47 FR 12338, Mar. 23, 1982; 49 FR 45742, Nov. 20, 1984; 51 FR 7551, Mar. 5, 1986]

§ 105.803 Designated Agency Ethics Officials.

(a) The Designated Agency Ethics Officials, appointed by the Administrator pursuant to the Ethics in Government Act of 1978, shall be the Deputy General Counsel. He may, in turn, appoint an Alternate Designated Agency Ethics Official, who will be an attorney in the Office of Finance and Legislation. The Alternate Official will assist the designated Agency Ethics Official and shall act for him in his absence, in the performance of his official functions.

(b) The Designated Agency Ethics Officials shall administer the program for Financial Disclosure Statements under § 105.512, receive and evaluate these statements and provide advice and counsel regarding matters relating to the Ethics in Government Act of 1978 and its implementing regulations. The duties and responsibilities of the Designated Agency Ethics Officials are set forth in more detail in 5 CFR Part 738 which is promulgated by and, from time to time, amended by the Office of Government Ethics.

[47 FR 12338, Mar. 23, 1982, as amended at 49 FR 45742, Nov. 20, 1984; 51 FR 7551, Mar. 5, 1986]

§ 105.901 Statutory and other regulatory provisions.

The attention of all employees is also directed to the following statutory and other legal provisions:

(a) House Concurrent Resolution 175, 85th Congress 2nd Session, 72 Stat. B12, the "Code of Ethics for Government Service."

(b) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibition against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) The prohibition against the employment of a member of a Commu nist organization (50 U.S.C. 784).

(f) The prohibitions contained in th Freedom of Information Act agains failing to disclose information discl sure of which is required by that Ac (5 U.S.C. 552(a)(4)(F)).

(g) The prohibitions against: (1) Th disclosure of classified information (1 U.S.C. 798, 50 U.S.C. 783); (2) the di closure of confidential information (1 U.S.C. 1905); and (3) disclosure of in formation which is restricted by th Privacy Act (5 U.S.C. 552a(i)(1)).

(h) The provision relating to the ha bitual use of intoxicants to excess (U.S.C. 7352).

(i) The prohibition against th misuse of a Government vehicle (3 U.S.C. 638a(c)).

(j) The prohibition against th misuse of the franking privilege (1 U.S.C. 1719).

(k) The prohibition against the u of deceit in an examination or person nel action in connection with Govern ment employment (18 U.S.C. 1917).

(l) The prohibition against fraud o false statements in a Governmen matter (18 U.S.C. 1001).

(m) The prohibition against mutilat ing or destroying a public record (1 U.S.C. 2071).

(n) The prohibition against counterfeiting and foregoing transportatio requests (18 U.S.C. 508).

(o) The prohibitions against: (1) Em bezzlement of Government money o property (18 U.S.C. 641); (2) failing t account for public money (18 U.S.C 643); and (3) embezzlement of th money or property of another perso in the possession of an employee b reason of his employment (18 U.S.C 654).

(p) The prohibitions against politica activities in Subchapter III of Chapte 73 of Title 5, United States Code an 18 U.S.C. 602, 607, and 608.

(q) The prohibitions against: (1) Embezzling or misapplying funds and securities, (2) making false reports with intent to defraud, (3) receiving money or profit fraudulently through act of SBA and (4) making profit out of information about value of securities of companies receiving assistance (15 U.S.C. 645).

(r) The provisions relating to post

Government employment restrictions (18 U.S.C. 207).

(s) The prohibition against official acts affecting employees' personal financial interest (18 U.S.C. 208).

(t) The prohibition against the payment of Government employees' salary by other than the United States (18 U.S.C. 209).

(u) The prohibition against Government employees receiving basic pay from more than one Federal Government job for more than 40 hours per week (5 U.S.C. 5533).

(v) The prohibitions against accepting honorariums beyond designated amounts (2 U.S.C. 441(i)).

(w) Code of Ethics for Government Service (Pub. L. 96-303; July 3, 1980).

[41 FR 29656, July 19, 1976, as amended at 47 FR 12338, Mar. 23, 1982]

PART 106—LEASE GUARANTEE

General

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Authority: 72 Stat. 694, 79 Stat. 482, 483, 484 (15 U.S.C. 687, 692, 693, 694).

Source: 34 FR 14881, Sept. 27, 1969, unless otherwise noted.

General

§ 106.1 Statutory provisions.

The statutory provisions will be found at 15 U.S.C. 692 to 694. It should be noted, however, that beginning with Fiscal Year 1977, no appropriation for the program has been made, Pub. L. 94-362, approved July 14, 1976, 90 Stat. 937. Accordingly, no applications under this program will be accepted until further notice.

[41 FR 37762, Sept. 8, 1976]

§ 106.2 Policy.

It is the intent of the Congress to strengthen the competitive free enterprise system by assisting certain qualified small business concerns to obtain leases of commercial and industrial property, where stringent credit requirements tend to exclude such concerns, by authorizing the Small Business Administration to guarantee, directly or in cooperation with others, the payment of rentals under such leases.

§ 106.3 Definitions.

For the purposes of this part:

(a) "Administrator" means the Administrator of the Small Business Administration.

(b) "SBA" means the Small Business Administration.

(c) "Small Business Concern" means a concern which would qualify as a small business under § 121.3-14 of this chapter.

(d) "Lease Guarantee" is an obligation evidenced by an insurance policy having a face value of the amount of rent assured to the lessor in the event of any default by the lessee in the covenants of the insured lease which results in vacant possession.

(e) A "qualified surety company or other qualified company" means a corporation which is authorized under applicable law to insure the rent provided for in leases of commercial or industrial property to small business concerns.

(f) "Commercial or industrial property" means any property, personal or real, to be leased and used, occupied or possessed by a small business concern in the conduct of its business.

(g) "Lessor" means a legal entity which is the owner of the right to occupancy or possession of the property to be leased. A lessor cannot be wholly owned or controlled by the lessee, a proprietary lessee's blood relatives, or a corporate lessee's officers, directors, or stockholders.

(h) "Lessee" means a small business concern which by the terms of the lease or proposed lease will acquire the right to use, occupy or possess the leased premises. A lessee cannot be wholly owned or controlled by the lessor or an individual lessor's blood relatives or a corporate lessor's officers, directors, or stockholders.

(i) "Lease" means the proposed or executed agreement between the lessor and the small business concern conveying the right to use and occupy or possess the leased premises for a term of years.

(j) "Rent" is the amount agreed upon by the lessor and the lessee for the right to use and occupy the leased premises and payable in fixed installments during the term of the lease.

(k) "Vacant Possession" means that the premises identified in the insured lease have been vacated by the lessee and restored to a condition which will permit immediate releasing by SBA or a participant for the purpose of mitigating loss.

(l) "Participation" means sharing the responsibility for the payment of the insured rent between SBA and a qualified surety company or other qualified company through a participation agreement.

(m) "Default" means any violation of the covenants and conditions of the lease by the lessee which results in a written demand for possession by the lessor.

(n) "Insurer" means SBA as a direct insurer or a qualified participating insurance company.

§ 106.4 Eligibility.

In order to be eligible for a lease guarantee, the lessee must:

(a) Qualify as a small business under § 121.3-14 of this chapter.

(b) Operate or propose operation of a business in conformity with Part 120—Loan Policy, of this chapter.

(c) Not be in unqualified possession of the premises under the lease prior to the issuance of a lease guarantee.

(d) Represent that without a lease guarantee on terms stipulated in the application, he is unable to obtain possession of the premises under the lease.

(e) Certify to SBA that a lease guarantee meeting the requirements of the lessee is not otherwise available on reasonable terms from private commercial sources.

§ 106.5 Procedure for lease guarantee applications.

Beginning with Fiscal Year 1977, no appropriation for the program has been made, Pub. L. 94-362, approved July 14, 1976, 90 Stat. 937. Accordingly, no applications under this program will be accepted until further notice.

[41 FR 37762, Sept. 8, 1976]

§ 106.6 Reinsurance agreement.

Any agreement by SBA to reinsure a qualified company shall provide that:

(a) The premiums charged by the company shall not be in excess of those charged by SBA for its policies of rental insurance.

(b) All other charges, such as processing fees, made by the company shall be reasonable.

(c) The distribution of the responsibility for payment of claims shall be as negotiated with the participating company. An example of distribution is as follows:

> The company shall be responsible for paying all claims arising out of the insurance policy up to an amount equal to 12 times the average monthly rent insured and not less than 20 percent of any claim in excess of this amount.

(d) Policies of insurance issued by the participant shall be serviced by the participating company.

(e) A portion of the total premium shall be paid to SBA for its reinsurance; the premium payable to SBA will be determined by negotiation and shall depend upon the degree and extent of the participation, but shall not exceed 2½ percent of the minimum guaranteed or insured rent payable under the lease.

§ 106.7 Insurance premium and amount of insurance.

(a) The premium for this insurance shall be due not later than the effective date of the rental insurance policy, shall be a single, nonrefundable premium and shall be paid in advance of issuance of the policy.

(b) The minimum term of a lease which SBA will guarantee directly is 10 years; the maximum term for such insurance is 20 years. The minimum term of a lease which SBA will guarantee in participation with a qualified company is 5 years; the maximum term for such insurance is 20 years.

(c)(1) The maximum amount of contract rent (exclusive of contingent overages) under leases to any small business concern or its affiliates for which a direct guarantee is issued by SBA shall not exceed the lesser of $15,000 in any month or $2,500,000 in the aggregate over the term guaranteed.

(2) The maximum amount of contract rent (exclusive of contingent overages) under two or more leases in any single property or group of contiguous properties for which direct guarantees are issued by SBA shall not exceed the lesser of $30,000 in any month or $5 million in the aggregate over the term guaranteed.

(3) SBA's share of the obligation to pay rental in participation with a qualified participating insurance company under leases to any small business concern or its affiliates shall not exceed the lesser of $15,000 in any month or $2,500,000 in the aggregate over the term guaranteed.

(4) The limitations of this subsection shall apply to all cases in which SBA has not, prior to April 1, 1971, issued a conditional commitment on an application for such a guarantee.

(d) SBA or a participant may insure all or a portion of the rent payable under a lease in installments. The outstanding amount of the policy may be increased by payment of additional premiums if the lease provides for an increase in the rent proportionate to increases in the costs of possession of the premises.

(e) The Administrator has determined on the basis of actuarial studies that the following schedule of premiums (which exclude processing fees) for rental insurance of leases of real property constitutes the maximum reasonable premiums for direct policies and policies reinsured by SBA.

Term of lease in years	Maximum reasonable premium (as percentage of total minimum rent guaranteed)
5	6.5
6	5.9
7	5.3
8	4.8
9	4.4
10	4.0
11	3.7
12	3.4
13	3.1
14	2.9
15	2.8
16	2.8
17	2.8
18	2.8
19	2.8
20	2.8

[34 FR 14881, Sept. 27, 1969, as amended at 36 FR 3185, Feb. 19, 1971]

§ 106.8 Approval or decline of application.

(a) Applications shall be accompanied by legible leases or proposed leases in print or type having a size of not less than 8 point.

(b) No insurance or reinsurance shall be approved or issued unless the analysis of location, management and finance made by the use of a system of risk analysis, approved by SBA, indicates that there exists a reasonable expectation that the small business applicant will perform the covenants and conditions of the lease or proposed lease.

(c) The terms, conditions, and covenants in a lease or proposed lease submitted to the insurer with an application shall be subject to recipient's approval. Insurer may require modifications to be made in the lease before issuance of the policy.

(d) If the insurer so determines because of the magnitude or complexity of a single application or if there are applications filed for three or more guarantees of leases in a single development or project, an independently prepared feasibility study provided by the applicant or applicants must be submitted.

§ 106.9 Required lease agreements.

Agreements shall be reached between the lessor and lessee and stated in the lease concerning:

(a) The division, if any, of any award in condemnation proceedings representing the value of the real estate, including fixtures and the value of the leasehold interest. The lessee must retain the rights, on the presumption that such rights exist under condemnation laws, to awards from or claims against the condemnor for any taking of the lessee's property (including any ownership in the leasehold improvements) for moving expenses and for damages for interruption of the lessee's business.

(b) The party or parties responsible for maintenance of hazard insurance and the payment of premiums therefor to insure real and personal property and whether such premiums on real property insurance are included in the minimum rent or are to be paid as additional minimum rent.

(c) The disposition of any hazard insurance proceeds and the party or parties responsible for reconstruction or repair of the premises and refurnishing or reequipping the building.

(d) The party or parties responsible for the payment of local taxes on the premises and whether such taxes are included in the minimum rent or are to be paid as additional minimum rent.

(e) That the lessee may not without the prior written consent of the lessor assign the lessee's interest in the lease or sublet the whole or any part of the premises.

(f) An equitable abatement of rent in the event all or any part of the premises are lost by casualty or condemnation proceedings. In lieu of such abatements, covenants by the tenant to obtain rent insurance or business interruption insurance will be considered.

§ 106.10 Minimizing the risk.

(a) Upon the effective date of the policy of rental insurance:

(1) The lessee shall pay an amount not to exceed one-quarter of the average guaranteed annual rental into an escrow account with the insurer for the purpose of paying rental charges not in excess of the guaranteed minimum monthly rental accruing in any month in which the lessee is in default or,

(2) The lessor shall accept an insurance policy providing for a deduction of from three (3) to six (6), months rent due after the date of default as the amount of loss to be borne by the lessor, as determined by the insurer.

(b) If an escrow account is established, it shall be accompanied by a written escrow agreement containing the following provisions:

(1) Simple interest at the rate of 4 percent per annum shall accrue to the escrowed fund from the date of deposit until the date of default.

(2) A default by the lessee in the covenants and conditions of the insured lease which is asserted by the lessor in a written demand for possession of the leased premises, shall forfeit all right and title of the lessee to the escrowed fund and interest accrued thereon.

(3) Upon such default and either before or after the lessee's actual possession is terminated, the insurer shall disburse to the lessor so much of the escrow as is necessary to pay claims for the guaranteed rent of rental charges accruing in any month in which the lessee is in default.

(4) If such default is cured by written agreement between the lessor and the lessee after the insurer has disbursed funds from the escrow to pay the lessor the guaranteed rent, the lessee shall, upon placing in this escrow an amount equivalent to the disbursed funds, be restored to all right, title, and interest in the escrowed fund as if such default had not occurred.

(5) If such default is not so cured and the lessee vacates because of eviction proceedings or the lessor's written demand, any portion of the escrowed funds remaining unused after the property is rerented shall be retained by the insurer.

(6) If no such default occurs during the term of the insurance policy, the insurer, upon written request of the lessee, shall disburse the funds to the lessee for application toward the payment of the final rental charges under said lease.

(7) If, prior to the expiration of the insurance policy, the lease is terminated by mutual consent of lessee and lessor, the total funds held in escrow shall be disbursed to the lessee upon receipt by the insurer of a request for such disbursement signed by the lessor and the lessee and advising the insurer of the termination date of the lease and that all rents due and payable to the date of termination were paid by the lessee.

(8) That the interests of the lessor and lessee in the escrowed funds shall not be subject to the claims of creditors of either the lessee or lessor or others nor to legal process and may not be voluntarily or involuntarily alienated or encumbered by lessor or lessee.

[34 FR 14881, Sept. 27, 1969, as amended at 39 FR 11417, Mar. 28, 1974]

§ 106.11 Lessors duties to lessee and insurer.

(a) The lessor shall perform the duties to the lessee required to be rendered by the terms of the insured lease.

(b) Upon the occurrence of a default by the lessee under the insured lease, the lessor shall give written notice simultaneously to the lessee and to the nsurer of the specific default.

(c) Unless such default is corrected by amicable agreement of the lessee and lessor on or before 30 days from date of notice, the lessor will take prompt action to terminate the occuancy of the lessee, to make such reairs to the property as are necessary o restore it to its original condition, rdinary wear and tear excepted, and o deliver vacant possession to the inurer unless the requirement for acant possession is postponed pursunt to § 106.12(c): *Provided, however,* This shall not be construed to prohibit mprovements in the premises permitd by the lease.

(d) If such default is not corrected y the lessee, the lessor shall utilize e entire period for which there are nds available in escrow for the payent of rental claims (or the deductie period) in reasonably diligent efrts to eliminate or minimize losses y rerenting the property covered by e lease to another lessee subject to the approval of the insurer for the purpose of retaining the insurance coverage unless vacant possession has been postponed pursuant to § 106.12(c).

(e) At any time after an uncorrected default and before the escrowed funds are exhausted, or the deductible period has expired, the lessor may rerent the property described in the insured lease to a new lessee satisfactory solely to the lessor; provided, however, such action by the lessor shall suspend the coverage of the insurance for the term of the new lease and no claim for losses sustained after the commencement date of the new lease and during the new tenant's term shall be paid by the insurer, and the aggregate amount of rent stated in the new lease shall be deducted from the total remaining amount guaranteed by the policy. The policy of insurance coverage shall be terminated and no claims shall be paid unless the lessor provides prompt written notice to the insurer of such rerenting with a true copy of the lease with the new lessee.

(f) At any time after an uncured default and before the escrowed funds are exhausted or the deductible period has expired, the lessor, before entering into a new lease with a new lessee may notify the insurer of the terms of the proposed new lease and of his intention to negotiate a lump-sum settlement of accrued and prospective losses based upon the terms of the proposed lease. If a settlement is agreed upon by the lessor and the insurer, payment of the negotiated settlement sum shall terminate the insurance policy.

(g) At any time after an uncured default and before the escrowed funds are exhausted or the deductible period has expired, the lessor may request the insurer to approve or consent to a new lessee and endorse the policy with the name of the new lessee; such consent shall not be given unless the risk to the insurer is not changed except for the nature of the business operation.

(h) Upon filing a claim for guaranteed rent in default, the lessor will continue to make reasonably diligent effort to minimize losses by assisting the insurer to locate a prospective lessee. Upon such filing and the exhaustion of the escrowed fund or the expiration of the deductible period, the lessor shall delivery vacant possession to the insurer with the right to rerent the premises unless vacant possession has been postponed pursuant to § 106.12(c).

[34 FR 14881, Sept. 27, 1969, as amended at 39 FR 11417, Mar. 28, 1974]

§ 106.12 Insurer's rights.

(a) The insurer shall have the right to inspect the lessee's premises and operations and to examine and audit the lessee's books and records at any time during the term of the policy of insurance.

(b) Upon the exhaustion of the escrowed funds or the expiration of the deductible period:

(1) The insurer shall become the successor to the lessor for the sole purpose of causing the premises to be rerented by the lessor for any lawful purpose at such rentals and to any lessee acceptable to the insurer. Any rentals accruing under such new lease shall be paid to, and become the property of the insurer; provided, that if at the end of any month the cumulative rentals paid to SBA under the new lease shall exceed the sum of (i) the cumulative amounts of the guaranteed rent paid on the claim by the insurer, (ii) the cumulative amounts paid to the lessor in past months under this subparagraph by reason of excess rentals under new leases, and (iii) an amount determined by SBA to be sufficient to defray the direct and administrative expenses incurred by SBA in connection with the claim, then the insurer will remit to the lessor for that month the amount of any such excess.

(2) The insurer will become a successor to the lessor for the purpose of collecting from the lessee in default all rentals which are in arrears by the terms of the lease and with respect to which the lessor has either received payment or an acknowledgment of the insurer's liability for future payment.

(3) All collateral hypothecated to the lessor by the insured lessee as security for payment of the rent shall be automatically vested in the insurer to secure the lessee's payment of the rent to the insurer.

(c) The insurer may pay claims for the guaranteed rent where the lessor has been notified by the insurer, in writing, to postpone dispossession of the lessee, if in the judgment of the insurer it would be in the best interest of the insurer or the lessee and consistent with SBA's statutory purpose to permit the lessee to continue to occupy the property.

[34 FR 14881, Sept. 27, 1969, as amended at 36 FR 3185, Feb. 19, 1971; 39 FR 11417, Mar. 28, 1974]

§ 106.13 Assignments, subleases and surrenders after occupancy.

(a) The interest of the lessee in the leased premises shall not be voluntarily assigned or transferred by corporate merger or capital stock transfer to a new lessee without the prior written consent of the lessor and the insurer.

(b) The lessee shall not sublease the entire premises or any portion thereof without the prior written consent of the lessor and the insurer.

(c) The lessor shall not consent to an assignment or sublease by the tenant without the prior written consent of the insurer.

(d) If the lessor gives consent in violation of paragraph (c) of this section, the policy of lease guarantee insurance shall be suspended for the remainder of the term of the assigned lease or for the term of the sublease, regardless of whether the entire premises are subleased.

(e) In the case of a transfer by assignment or sublease of the leasehold estate or any portion thereof to a new tenant, a lessor who desires to retain the insurance of the rent in its original amount by obtaining the insurer's consent endorsed on the policy shall submit to the insurer such information concerning the assignee or sublessee as the insurer may require.

(f) If the assignee or sublessee is a small business concern and proposes to conduct business operations within the premises and the risks of management and financial structure have not increased, the insurer may consent to the assignment or sublease without payment of a new premium.

(g) If the insurer finds that the risk of the new management or financial

tructure of the assignee or sublessee
an increased risk, the insurer shall
reat the assignment or sublease as a
ew lease and shall give consent only
the insurer is paid a premium based
n the original rent or the rent of the
ublease, the remaining months of the
olicy term and the prevailing rate
chedule at the time the insurer's con-
ent is requested.

(h) If the lessee, without default vol-
ntarily vacates or surrenders posses-
ion of the leased premises to the
essor or to any other occupant (in-
luding any corporate survivor of a
orporate merger with the lessee) with
he consent of the lessor, the insur-
nce shall terminate.

106.14 Acquisition of premises by in-sured lessee.

If during the term of an insured
ease an insured lessee exercises an
ption to purchase the premises or
urchases an undivided interest in the
remises or acquires any of a corpo-
ate lessor's capital stock, the initial
mount of insured rent shall be re-
uced by an amount equivalent to the
essee's acquired interest in the prem-
ses or in the capital stock of the
essor.

106.15 Acquisition of lessee by lessor.

If, during the term of an insured
ease, the lessor, its subsidiaries or af-
iliates or any individual in control of
he lessor acquires an interest in the
essee, the initial amount of insured
ent shall be reduced by an amount
quivalent to the acquired interest in
he lessee.

106.16 Effect of condemnation and casu-alty losses on insurance.

(a) In the event the property de-
cribed in the lease which is the sub-
ect of the insurance is totally con-
emned or totally destroyed, the in-
urance is terminated as of the date of
itle vesting in the condemnor or as of
he date of the casualty loss.

(b) In the event of partial condem-
ation or partial casualty losses, the
mount of insurance is abated by the
atio which the minimum rent as
tated by the terms of the lease bears
o the guaranteed or insured minimum
ent.

§ 106.17 Lease guarantee administration.

(a) *Direct guarantees.* All policies of insurance which are issued directly by SBA will be serviced by SBA.

(b) *Participation guarantees.* All policies of insurance which are issued by a participant shall be serviced by the participant.

§ 106.18 Rights and obligations of assignees of the lease rerental guarantee insurance policy.

An assignee of a lease rental guarantee insurance policy becomes a loss payee for its interest in rental payments made by the insurer after default by the tenant through an assignment of interest endorsement to the policy. Such rental payments will be made only when the lessor, or the assignee acting as lessor, is in compliance with the provisions of the policy and §106.11 of these regulations.

[39 FR 11417, Mar. 28, 1974]

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

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APPENDIX I—AUDIT GUIDE FOR SBICs AND PREPARATION OF THE ANNUAL REPORT
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AUTHORITY: Sec. 308(c), 72 Stat. 694, as amended (15 U.S.C. 687(c)); sec. 312, 78 Stat. 147 (15 U.S.C. 687d); sec. 315, 80 Stat. 1364 (15 U.S.C. 687g).

SOURCE: 48 FR 45017, Sept. 30, 1983, unless otherwise noted.

REGULATIONS

§ 107.1 Scope of Part 107.

The regulations in this part implement Title III of the Small Business Investment Act of 1958, as amended. All Licensees, including section 301 (d) Licensees, must comply with all applicable regulations and appendices.[1]

§ 107.2 Information, forms, instructions and captions.

All references in this part to SBA forms, and instructions for their preparation, are to the current issue of such forms. The forms have been filed with the Office of the Federal Register with the original document. Copies may be obtained from SBA. Captions are used for convenience only and are not part of these regulations.

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[1] The accounting guidelines for SBICs include Audit Guide for SBICs, Guide for the Preparation of the Annual Report, SBA Form 468, and the System of Account Classification, and are set forth as Appendices A, B, and C to these regulations.

DEFINITIONS

§ 107.3 Definition of terms. [2]

Act. "Act" means the Small Business Investment Act of 1958, as amended.

Articles. "Articles" means articles of incorporation or charter for a Corporate Licensee and the partnership agreement or certificate for an Unincorporated Licensee.

Assistance. "Assistance" or "Assisted" means Financing of or Management Services rendered to a Small Concern by a Licensee pursuant to the Act and these regulations.

Associate of a Licensee. "Associate of a Licensee" means:

(a)(1) An officer, director, employee or agent of a corporate Licensee; (2) a Control Person, employee or agent of an Unincorporated Licensee; (3) a manager or Investment Adviser of any Licensee, which terms (manager or Investment Adviser) include any Person contracting with a Control Person of an Unincorporated Licensee to serve as manager or Investment Adviser to such Licensee, or (4) any Person regu- arly serving a Licensee on retainer in he capacity of attorney at law; or

(b) Any Person owning or control- ing, directly or indirectly, ten percent r more of any class of stock of a Cor- orate Licensee or of the partnership apital of an Unincorporated Licensee;

(c) Any officer, director, partner, anager, or employee of any Associate escribed in paragraph (a) or (b) of nis definition: *Provided, however,* hat subject to paragraph (b) of this efinition, a Person with no other re- tionship to any Associate described s paragraph (a) or (b) of this defini- on but that of a limited partner shall ot be considered an Associate of such ssociate.

(d) Any Person which directly or in- rectly Controls or is Controlled by, r is under common Control with, a Li- nsee or any Person described in aragraphs (a) and (b) of this defini- on; or

(e) Any Close Relative of any Person scribed in paragraphs (a) and (b) of is definition; or

(f) Any concern in which (1) any Person described in paragraphs (a) through (e) of this definition is an officer of director or (2) any such Person (or group of two or more such Persons acting in concert) who owns or Controls, directly or indirectly, a ten or more percent equity interest (exclusive of any interest attributable solely because of ownership of an equity interest in the Licensee).

(g) For the purposes of this definition, any Person in any of the relationships described in paragraphs (a) through (f) of this definition within six months before or after the date on which the Licensee provided Assistance, shall be deemed to have been in such relationship as of the date of the Licensee's Assistance.

(h) A Section 301(d) Licensee and a participant Licensee owning stock thereof, or securities evidencing a contribution to the partnership capital thereof, pursuant to § 107.712 as well as Associates of such section 301(d) Licensee and such participant Licensee shall be deemed Associates of each other.

Close relative. "Close relative" means ancestor, lineal descendant, brother or sister and lineal descendants of either, spouse, aunt, uncle, father-in-law, mother-in-law, son-in-law, brother-in-law, daughter-in-law, or sister-in-law.

Control. "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Licensee or a Small Concern whether through the ownership of voting securities, by contract, or otherwise.

Control Person. "Control Person" means (a) a general partner of an Unincorporated Licensee, including all general partners of a partnership serving as general partner of an Unincorporated Licensee; (b) any officer, director, agent or employee of a corporate general partner of an Unincorporated Licensee, including any corporation that is a general partner in a partnership serving as general partner of an Unincorporated Licensee; and (c) any Person owning 10 percent or more of the stock of a corporate general partner of an Unincorporated Licensee.

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[2] Terms defined in this section are capital- d hereafter.

Cost of Money. Generally, cost of money includes the total consideration given to a Licensee and its Associates by, or for the benefit of, the Small Concern, such as interest, discounts, points, fees, commissions, closing costs and any other thing of value given for financings in the form of Loans and Debt Securities and shall be prorated over the stated term of the financing. Cost of Money does not include fees for management services pursuant to § 107.501, bona fide commitment fees pursuant to § 107.402, or prepayment penalties pursuant to § 107.301(a). *Provided, however,* That if a Licensee has imposed a front end charge, such charge shall be prorated over the stated term of the financing. In that case, the sum of interest, unearned charges, and prepayment penalties shall not exceed the cost of money limit in effect at the time of the financing; and in the event of prepayment any excess shall be returned to the Small Concern.[3]

Corporate License: see Licensee.

Debenture Rate. "Debenture rate" means the interest rate, as published from time to time in the FEDERAL REGISTER by SBa, for ten year debentures issued by Licensees and funded through public sales of certificates bearing SBA's guarantee. User or guarantee fees, if any, paid by a Licensee are not considered in determining the Debenture rate.

Debt Securities. "Debt securities" means securities evidencing a Loan with options or any right to acquire Equity Securities in a Small Concern or its affiliates (as defined in § 121.3-2) or which are convertible to such equity position.

Debtor Licensee. "Debtor Licensee" means a Licensee which has Leverage from SBA.

Disadvantaged Concern. "Disadvantaged Concern" means a Small Concern owned by a person or persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Equity Securities. "Equity Securities" means stock of any class in an incorporated Small Concern, or limited partnership interests in an unincorporated Small Concern or joint venture interests. Equity Securities redeemable in a manner other than provided in § 107.321 shall be considered Loans.

Financing. "Financing" or "Financed" means outstanding financial assistance provided to a Small Concern by a Licensee, whether through (a) Loans (b) guaranties, (c) Debt Securities, (d) Equity Securities (e) commitments or (f) purchases of securities of a Small Concern through or from an underwriter. (see § 107.404).

Investment Adviser/Manager. "Investment Adviser/Manager" of a Licensee means any person who pursuant to written contract executed in accordance with the provisions of § 107.709 furnishes advice or assistance with respect to operations of a Licensee.

Lending Institution. "Lending Institution" means a concern operating under regulations of a state or Federal licensing, supervising, or examining body and which holds itself out to the public as engaged in the making of commercial and industrial loans and whose lending operations are not for the purpose of financing its own or an Associates' sales or business operations.

Leverage "Leverage" means financial assistance provided to a Licensee by SBA, either through the purchase or guarantee of debentures, or through the purchase of preferred securities (see §§ 107.01 through 107.205).

Licensee. "Licensee" means either a corporation ("Corporate Licensee"), or a limited partnership organized pursuant to § 107.4 ("Unincorporated Licensee"), to which a license has been granted pursuant to the Act. For section deeming "Licensee" to include the corporate general partner of an Unincorporated Licensee, see § 107.4(b)(2).

Loan. "Loan" means a debt with no provision for the Licensee to acquire Equity Securities.

1940 Act company. "1940 Act Company" means a Licensee which is registered under the Investment Company Act of 1940.

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[3] The SBA will use the latest edition of the *Financial Compound Interest and Annuity Tables*, Financial Publishing Company, Boston, Mass. 02215, in computing Cost of Money charged Small Concerns by SBICs.

1980 Act Company. "1980 Act Company" means a Licensee which is registered under the Small Business Investment Incentive Act of 1980.

Person. "Person" means a natural person or legal entity.

Portfolio. "Portfolio" means the securities representing a Licensee's total outstanding Financing of Small Concerns. It does not include idle funds or assets in liquidation.

Portfolio Concern. "Portfolio Concern" means a Small Concern Assisted by a Licensee.

Private Capital. On and after August 16, 1982, "Private Capital" for licensing, Leverage and regulatory purposes means the combined private paid-in capital and paid-in surplus of a Corporate Licensee, or in the case of an Unincorporated Licensee, the partnership capital. Private Capital does not include Leverage provided by SBA, funds borrowed by a Licensee from any source, or funds invested by any State or any subdivision or instrumentality of a State, or funds invested directly or indirectly by any other Federal governmental entity ("public funds"): *Provided, however,* that for licensing, Leverage and regulatory purposes Private Capital shall include Federal funds invested in a Licensee pursuant to a statute, such as 42 U.S.C. 9815, which expressly requires that such funds invested in a Licensee shall be included in Private Capital; and *Provided further,* that for Leverage and regulatory purposes only, Private Capital shall include Community Development Block Grant funds invested in a Licensee pursuant to the Housing and Community Development Act of 1974 not later than August 16, 1982, and such other public funds received from Federal governmental entities as may be judicially mandated.

Real Estate Investment. "Real Estate Investment" means a Licensee's Financing of a Small Concern which is classified as a real estate concern under Industry Numbers 6511, 6541 and 6552 of the SIC Manual. For restrictions governing Real Estate Investments, see §§ 107.101(c) and 107.901(c).

SBA. "SBA" means the Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

Section 301 (d) Licensee. "Section 301 (d) Licensee" means a Licensee organized under a State business or nonprofit corporation statute, or a limited partnership organized pursuant to § 107.4, and licensed pursuant to Section 301(d) of the Act, the investment policy of which is limited to making investments solely in small concerns which will contribute to a well balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Short-term financing. "Short-term financing" means Financing for a term of less than five years in accordance with the regulations.

SIC Manual. "SIC Manual" means the latest issue of the Standard Industrial Classification Manual, prepared by the Office of Management and Budget, and available from the U.S. Government Printing Office.[4]

Small Concern. "Small Concern" means a small business concern as defined in section 103(5) of the Act (including affiliates as defined in § 121.3-2 of this chapter), which for purposes of size eligibility, meets the applicable criteria set forth in § 121.3-11 of Part 121 of this chapter.

Unincorporated Licensee: see Licensee.

[48 FR 45017, Sept. 30, 1983, as amended at 49 FR 13864, Apr. 9, 1984; 49 FR 43541, Oct. 29, 1984; 51 FR 40001, Nov. 4, 1986]

§ 107.4 Limited partnership SBIC.

(a) *General.* A limited partnership organized under State law solely for the purpose of performing the functions and conducting the activities contemplated under the Act may apply for a license pursuant to Section 301(c) or Section 301 (d) of the Act.

(b) *Application.* The following requirements shall apply to an application submitted by or on behalf of a limited partnership:

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[4] As of the effective date of this Revision, the latest issue of the SIC Manual was 1972.

(1) *Number of General Partners.* Unless the applicant has a corporate general partner, it shall not have fewer than two individual general partners initially, and thereafter for not more than sixty days at any one time. Some or all of the general partners may be members of a separate partnership that serves as a general partner of such Licensee; but all general partners of such separate partnership shall be considered for all purposes to be general partners of the Unincorporated Licensee. A limited partnership may not serve as a general partner of an Unincorporated Licensee.

(2) *Corporate General Partner.* A corporate general partner shall be organized under State law solely for service as such and its Articles (which shall accompany the License Application) shall specify that no person shall serve as an officer or director without SBA's approval. No corporate general partner may serve as such for any other Licensee. The corporate capital of such general partner which is not invested in the Unincorporated Licensee shall be invested only as permitted by the last sentence of section 308(b) of the Act, pursuant to § 107.708 or in accordance with § 107.903(c), or any of them. A corporate general partner is subject to the same examination and reporting requirements as a Licensee under Section 310(b) of the Act. The restrictions and obligations imposed upon a Licensee by § 107.203(b)(2) and (3)(iii) and by §§ 107.601, 107.603, 107.701, 107.702, 107.703, 107.708, 107.709, 107.801, 107.802, 107.803, 107.1001, 107.1002, and 107.1004 apply also to a corporate general partner of a Licensee.

(3) *Articles of Partnership.* The Articles shall be transmitted to SBA with the application and shall provide that (i) the partnership shall have a duration of not less than thirty years unless sooner dissolved by the partners; (ii) no general partner may be removed or replaced by the limited partners without prior written approval of SBA; and (iii) any transferee of, or successor in interest to, a general partner shall have only the rights and liabilities of a limited partner pending SBA's written approval of such transfer or succession.

(c) *Obligations of a Control Person.* All Control Persons are bound by the disciplinary provisions of sections 313 and 314 of the Act and by the conflict-of-interest rules under section 312 of the Act. The term "Licensee," as used in §§ 107.602, 107.701 and 107.1004 includes a Control Person of a Licensee. The term "Licensee" as used in § 107.1101 includes only a general partner. The events of default specified in §§ 107.203(b)(1) (ii), (iii) and (iv) and in § 107.203(b)(2) shall apply to all general partners; the events of default specified in § 107.203(b)(4) shall apply to all Control Persons. The events of default enumerated in the preceding sentence shall be deemed to have been agreed to by the Unincorporated Licensee.

(d) *Liability of general partner for partnership debts to SBA.* Subject to section 314 of the Act, the general partner of an Unincorporated Licensee shall not be liable solely by reason of its status as a general partner for repayment of any debts owed by the Licensee to SBA unless SBA, in the exercise of reasonable investment prudence, and with regard to the financial soundness of such Unincorporated Licensee, shall determine otherwise prior to the purchase or guaranty of such Unincorporated Licensee's debentures.

(e) *Reorganization of Corporate Licensee.* A corporate Licensee wishing to reorganize as an Unincorporated Licensee, or an Unincorporated Licensee wishing to reorganize as a Corporate Licensee, may apply to SBA for approval pursuant to § 107.803 of these Regulations.

OPERATIONAL REQUIREMENTS

§ 107.101 Operational requirements.

All Licensees shall comply with the following requirements:

(a) *Management.* Each Licensee shall have and maintain qualified management (including management pursuant to § 107.709) in charge of its operations who will be available at its office to the public. A manager of a Licensee shall be deemed an officer.

(b) *Office.* The Licensee shall maintain a reasonably accessible office, which will display the license, and the name of the Licensee, have a listed telephone number, and be open to the public during regular business hours.

(c) *Diversified investment policy-real estate and motion pictures.* Unless specifically authorized in writing by SBA:

(1) *General rule.* No Licensee shall maintain more than one-third of its portfolio, as of the close of any full fiscal year, in: (i) Permitted real estate investments, or (ii) investments in Small Concerns engaged in motion picture production and distribution (classified under Industry Nos. 7813, 7814, 7823, and 7824 of the SIC Manual). For further provisions governing real estate investments, see §107.901(c). For statement of general policy concerning motion picture specialist-Licensees, see 42 FR 60729, November 29, 1977.

(2) *Licensees other than real estate specialists.* Where a Licensee does not operate as an approved real estate specialist subject to paragraph (c)(3) of this section, its investments in Small Concerns classified under Major Groups 15, 65 and/or 70 of the SIC Manual shall not exceed one-third of its Portfolio in any one such Major Group, nor two-thirds for any combination of such Major Groups, as of the close of any full fiscal year.

(3) *Real estate specialists.* Where a Licensee maintains more than one-third of its Portfolio in Real Estate Investments pursuant to an investment policy approved by SBA, the total of its investments in Small Concerns classified under Major Group 15 (Building Construction-General Contractors and Operative Builders) and Major Group 70 (Hotels, Rooming Houses, Camps and Other Lodging Places) of the SIC Manual shall not exceed twenty percent of its Portfolio as of the close of any full fiscal year.

(4) *Prepayments.* Prepayments of outstanding Financing or similar events occurring beyond the control of the Licensee within the fiscal year shall be disregarded in determining whether the Licensee meets the foregoing requirements as of the close of its fiscal year.

(d) *Minimum Capital.* Every Licensee shall have:

(1) Private Capital of at least $1,000,000: *Provided, however,* That this $1,000,000 minimum capital requirement shall not apply with respect to any license application on file with SBA on the date of publication of this regualtion in final form nor with respect to any license issued on the basis of such application. Licensees licensed on or after October 1, 1979 and before the effective date of this regulation shall have a Private Capital of at least $500,000; Licensees licensed prior to October 1, 1979 shall have a Private Capital of at least $150,000; and

(2) Taking additional resources into account, adequate capital to assure a reasonable prospect that it will be operated soundly and profitably, and managed actively and prudently in accordance with the Act and regulations.

(e) *Borrowed funds.* Persons owning directly or indirectly, beneficially or of record, an equity interest of ten or more percent of a Licensee's Private Capital may not use borrowed funds in purchasing such interest, unless the net worth of such person is at least twice the amount borrowed, or unless such person obtains SBA's prior written approval of a lesser ratio on the grounds that it is adequate in light of all the circumstances.

[48 FR 45017, Sept. 30, 1983; 49 FR 13864, Apr. 9, 1984]

LICENSE

§ 107.102 License application and fees.

(a) *Initial Application.* The license application shall be submitted on SBA Form 415 (OMB Approval No. 3245-0062) together with a processing fee of $5,000 in accordance with accompanying instructions.

(b) *Post-licensing changes.* A processing fee of $200 shall accompany each request for approval, not subject to § 107.601, of a new officer, director, Control Person or owner of ten or more percent of the Licensee's Private Capital.

[48 FR 45017, Sept. 30, 1983; 49 FR 13864, Apr. 9, 1984]

§ 107.103 Public notice.

SBA shall publish notice of the license application in the FEDERAL REGISTER. It shall include such appropriate information as the name and location of the proposed Corporate Licensee, its area of operation, the names and addresses of its officers, directors, and owners of, or persons controlling 10 or more percent of its voting stock; and in the case of an Unincorporated Licensee, its name, location, and area of operation, and the names and addresses of its Control Persons. If any Control Person is a corporation, the notice shall set forth the names and addresses of any officers, directors, and owners of, or persons controlling 10 percent or more of the stock of such corporation. In the case of an Unincorporated Licensee, the notice shall also include the name and address of each owner of 10 percent or more of the Licensee's Private Capital. The public shall be afforded reasonable opportunity for the submission of written comments. The proposed Licensee shall publish a similar notice in a newspaper of general circulation in the city or proposed area of operation, and shall furnish a certified copy to SBA within 10 days of the date of publication.

[48 FR 45017, Sept. 30, 1983; 49 FR 13864, Apr. 9, 1984]

§ 107.104 Transferability of license.

A license shall not be transferred in any manner without SBA's prior written approval.

§ 107.105 Surrender of license.

A License shall not be surrendered without SBA's prior written approval. Request for approval shall be accompanied by an offer of immediate repayment of all Leverage, or by a plan satisfactory to SBA for the orderly liquidation thereof. Upon receipt of Licensee's request, SBA may remove Licensee's name from published lists of Licensees, and may conduct an examination or investigation of its affairs pursuant to section 310 of the Act.

BORROWING BY LICENSEE

§ 107.201 Funds to licensee.

(a) *Application procedure*—(1) *Licensees other than Section 301(d) Licensees.* A Licensee (other than a Section 301(d) Licensee) may apply fo Leverage pursuant to section 303(b) o the Act on SBA Form 1022 in accordance with accompanying instructions. Applications for Leverage must be accompanied by evidence demonstrating to SBA's satisfaction the need therefor. Prior to the extension of any Leverage, an Unincorporated Licensee must furnish SBA with a ruling by the Internal Revenue Service that it qualifies as a partnership for tax purposes: *Provided, however,* That where a delay in obtaining an IRS ruling would cause a hardship to the Licensee, SBA may, pending receipt of such a ruling, make leverage funds available under interim financial arrangements which in SBA's judgment are satisfactory to protect SBA's creditor or guarantor position from an adverse IRS determination.

(2) *Section 301(d) Licensees.* A Section 301(d) Licensee may apply for Leverage pursuant to section 303(c) of the Act[5] on SBA Form 1022A (for purchase of preferred securities and debentures), on SBA Form 1022B (for exchange of debentures for preferred securities), or on SBA Form 1022 (for guaranty of debentures) in accordance with accompanying instructions. Applications for Leverage must be accompanied by evidence demonstrating to SBA's satisfaction the need therefor.

(b) *SBA Guaranty.*

(1) SBA may in its discretion agree to guaranty a Licensee's debentures unconditionally, irrespective of the validity, regularity or enforceability of such debentures or any other circumstances which might constitute a legal or equitable discharge or defense of a guarantor and, pursuant to its guaranty, to make timely payments of principal and interest, irrespective of any

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[5] Section 303(c) of the Act authorizes SBA to purchase nonvoting preferred securities, and to purchase or guaranty debentures issued by Section 301(d) Licensees, which may be subordinated in accordance with Section 303(b) of the Act.

default by the issuing Licensee or acceleration of the maturity thereof by SBA.

(2) Persons interested in providing funds to Licensees under such guaranty may notify SBA by letter, certifying whether such lender has a direct or indirect beneficial interest of ten or more percent of the actual or potential voting rights in any Licensee, or in any person directly or indirectly controlling, controlled by or under common control with, any Licensee. Such certification will not be required from lenders where the borrowing Licensees will be selected or approved by SBA or its agents. SBA will endeavor to match such offers with applications pursuant to paragraph (a) of this section but cannot assure that such offers will be accepted. SBA in its discretion may also arrange for public or private financings under its guaranty authority. These reporting requirements are approved under OMB No. 3245-0081. Such private or public financings arranged by SBA in its discretion may be accomplished by the sale of individual Debentures, aggregations of Debentures, or pools or trusts of Debentures issued or sold in connection with § 107.201(c).

(3) No SBA guaranty shall be extended to a lender:

(i) Having a direct or indirect beneficial interest of ten or more percent in the Private Capital of the Licensee to be guaranteed, or in any Person directly or indirectly controlling, controlled by, or under common control with, such Licensee; or

(ii) Having such interest involving another Licensee which has received or is about to receive pursuant to any understanding, arrangement, cross-dealing, reciprocal or circular arrangement any direct or indirect financing (or a commitment for financing) from another lender with SBA's guaranty. SBA may void any guaranty obtained in violation of this paragraph (b)(3), but the foregoing shall not apply to lenders whose borrowers are selected or approved by SBA or its agents.

(c) *Financing by Issuance and Guarantee of Trust Certificates*—(1) *Definitions*—(i) *Debentures.* Obligations issued by Licensees pursuant to section 303(a) of the Act and guaranteed by SBA pursuant to section 303(b) of the Act.

(ii) *Trust Certificates (TCs).* Certificates issued by SBA or its agent representing ownership of all or a fractional part of a trust or pool of Debentures.

(iii) *Trust.* An aggregation of Debentures approved by SBA.

(iv) *Pool.* An aggregation of Debentures approved by SBA.

(v) *Central Registration Agent (CRA).* One or more agents of the SBA appointed for the purposes of issuing TCs, and performing the functions enumerated in subsection (3) hereof.

(vi) *Guaranty Agreement.* The contract issued by SBA which sets forth SBA's obligation to guarantee the timely payment of principal and interest on Debentures and its rights in connection with the guarantee.

(2) *Authority.* Section 321(a) of the Act authorizes SBA or its CRA to issue TCs and SBA to guarantee the timely payment of the principal and interest thereon. Any guarantee by SBA of any TC is limited to the extent of the principal and interest due on the Debentures in any Trust or Pool backing such TC. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under the guarantee of any TC. The SBA shall not charge or collect any fee for the guarantee of any TC.

(i) *Terms and Conditions of the TCs.* TCs shall provide for the pass-through to the holders thereof of all amounts of principal and interest paid on the Debentures composing the Pool or Trust against which they are issued. SBA shall determine the legal and other terms and conditions of TCs in conjunction with the Secretary of the Treasury and its own statutory authority and such other requirements as may be mandated by law. The interest rate on the SBA guaranteed SBIC Debentures composing a Trust or Pool shall be determined pursuant to Section 303(b) of the Act.

(ii) *Effects of Prepayment of Debentures on a TC.* The rights, if any, of an SBIC to prepay any Debenture are established by the terms of the Debentures and no such right is created or denied by these regulations. SBA's rights to purchase or prepay any Debenture without premium are established by the terms of the Guaranty Agreement relating to the Debenture. Any prepayment of a Debenture either voluntarily on the part of the issuer Licensee pursuant to the terms of the Debenture, or by the SBA pursuant to the terms of the Guaranty Agreement relating to the Debenture, shall reduce a guarantee of timely payment of principal and interest on a TC in proportion to the amount of principal and interest such prepaid Debenture represents in the Trust or Pool backing such TC. To the extent of any such prepayment, SBA shall be discharged from its guaranty obligation to the holder or holders of any TC, or any successor or transferee of such holder, whether or not such successor or transferee shall have notice of any such prepayment. Interest on prepaid Debentures shall accrue only through the date of such voluntary prepayment or SBA payment, as the case may be In the event all Debentures constituting a Trust or Pool are prepaid, SBA may call all TCs backed by such Trust or Pool for redemption in consideration for payment of the unpaid principal and interest on the TCs. *Provided, however,* that in the case of the prepayment of a Debenture either voluntarily by the issuer pursuant to the terms thereof, or by SBA pursuant to the provisions of the Guaranty Agreement relating to the Debenture, SBA shall directly or through its CRA pass through pro rata to the holders of the TCs any such prepayment including any prepayment penalty paid of the obligor SBIC pursuant to the terms of the Debenture.

(iii) *SBA Ownership Rights.* In the event SBA pays a claim under the guarantee of a TC, it shall be subrogated fully to the rights satisfied by such payment; and no state law, and no Federal law, shall preclude or limit SBA's exercise of its ownership rights acquired by subrogation upon payment under its guarantee.

(iv) *Pool or Trust Approval.* SBA shall approve the information of each pool or trust.

(v) *Pool or Trust Attributes.* SBA may, in its discretion, establish the size of the pools and their composition, the interest rate on the TCs issued against Trusts or Pools, fees, discounts, premiums and other charges made in connection with the pools, trusts, and TCs, and any other characteristics of a pool or trust it deems appropriate. SBA will from time to time notify the public of the approved pool attributes by publication of such attributes in the FEDERAL REGISTER.

(3) *Functions of the CRA.* Pursuant to a contract entered into with SBA, the CRA shall perform the following functions as agent of the SBA.

(i) *Issuance of the TCs.* Upon the formation of any Pool or Trust approved by SBA, CRA shall issue TCs, in the form prescribed by SBA, upon the primary sale of Debentures, and shall issue or effect the transfer of TCs upon the sale of original issue TCs in any secondary market transaction.

(ii) *Receipt of Amounts Due on Debentures.* CRA shall receive payments from Licensees of amounts due on Debentures, and amounts paid under voluntary prepayments or prepayments by SBA pursuant to the terms of the relevant Guaranty Agreements.

(iii) *Payments of Amounts Due on TCs.* CRA shall pay periodic payments as scheduled or required by the terms of the TCs, and pay all amounts required to be paid upon prepayment of Debentures.

(iv) *Custody of Debentures and Documentation.* CRA shall hold and safeguard all Debentures constituting Trusts or Pools and shall release, upon instructions of SBA the Debentures paid in full at maturity or prepaid in full prior to maturity. CRA shall also be custodian of such other documentation as SBA shall direct by written instructions.

(v) *Registration of Debentures and TCs.* CRA shall provide for the registration of all primary sales of Debentures, all Pools and Trusts and all TCs. Such registration shall at a minimum include with respect to each sale of Debentures the identification of the selling Licensee; the interest rate to be paid on the Debentures; commissions, fees, and/or discounts paid to brokers and dealers in TC or others; identification of each purchaser and any subsequent purchaser of any TC; the interest rate paid or to be paid on any TC; the price paid by any purchaser for a TC; the fees of the CRA; and such other information as the SBA may deem appropriate or that may be customary in the markets for transactions of similar type.

(vi) *Fidelity Bond or Insurance.* Such Agent shall provide a fidelity bond or insurance in such amount as necessary to fully protect the interest of the government.

(vii) *Other Necessary Functions.* Such other functions as may be necessary to implement the provisions hereof.

(viii) *Fees.* SBA may establish a fee structure for the performance of services by th CRA and will publish such fees in the FEDERAL REGISTER from time to time for public review and comment.

(4) *SBA Regulation of Disclosure and Brokers and Dealers*—(i) *Disclosure to Purchasers.* Prior to any sale of a Debenture, or a TC pursuant to the provisions hereof, SBA shall require the seller, or the broker or dealer as agent for the seller, in the form prescribed or approved by SBA, to disclose to the purchaser of a Debenture or a TC specified information on the terms, conditions, and yield of such instrument.

(ii) *Brokers and Dealers.* Each broker, dealer, and Pool or Trust assembler approved by SBA or its agent pursuant to these regulations shall be regulated by a Federal financial regulatory agency, or be a member of the National Association of Securities Dealers (NASD), and in good standing in respect to compliance with the financial, ethical, and reporting requirements of such body. They shall also be in good standing with SBA as determined by the SBA Associate Administrator for Finance and Investment (see paragraph (c)(4)(iv) of this section) and shall provide a fidelity bond or insurance in such amount as necessary to fully protect the interest of the government.

(iii) *Suspension and/or Termination of Broker or Dealer.* SBA shall exclude from the sale and all other dealings in debentures or TCs any broker or dealer:

(A) If such broker's or dealer's authority to engage in the securities business has been revoked or suspended by a supervisory agency. When such authority has been suspended, such broker or dealer will be suspended by SBA for the duration of such suspension by the supervisory agency.

(B) If such broker or dealer has been indicted or otherwise formally charged with a misdemeanor or felony bearing on its fitness to participate in the market for Debentures or TCs, such broker or dealer may be suspended while the charge is pending. Upon conviction, participation may be terminated.

(C) When such broker or dealer has suffered an adverse final civil judgment, holding that such broker or dealer has committed a breach of trust or violation of law or regulation protecting the integrity of business transactions or relationships, participation in the market for Debentures or TCs may be terminated.

(D) When such broker or dealer has failed to make full disclosure of the information required by § 107.201(c)(4)(i) of this part, such broker's or dealer's participation in the market for Debentures or TCs may be terminated.

(iv) Proceedings to terminate such broker's or dealer's participation in the market for such Certificates shall be conducted in accordance with Part 134 of this Title. SBA may, for any of the reasons stated above, suspend the privilege of any broker or dealer to participate in this market. SBA shall give written notice at least ten (10) business days prior to the effective date of such suspension. Such notice shall inform the broker or dealer of the opportunity for a hearing pursuant to Part 134 of this Title. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of §§ 134.32(b)(7) and 134.34.

(5) *Access to Records.* The CRA and any broker, dealer and Pool or Trust assembler operating under these regulations shall make all books, records and related materials associated with Debentures and TCs available to SBA for review and copying purposes. Such

Access shall be at the place of business during normal business hours.

(6) *Selling Debentures and TCs.* The function of locating purchasers, and negotiation and closing the sale of Debentures and TCs may be the function of the SBA or an agent appointed by SBA. Nothing in these regulations shall be interpreted to prevent the CRA from acting as SBA's agent for this purpose.

(d) *User fee.* All Licensees offering debentures for sale to, or for guaranty by, SBA are required to pay a one-time user fee equal to the following percentages of the par value (face amount) of the debentures.

Stated maturity of debenture	Fee (percent)
3 years	0.5165
5 years	.7690
7 years	.9965
10 years	1.1850

The user fee on debentures intended to refund maturing obligations held or guaranteed by SBA shall be paid to SBA before such debentures may be purchased or guaranteed. If the Licensee's debentures evidence a new indebtedness, as distinguished from the refinancing on a pre-existing indebtedness, the user fee shall be deducted from the proceeds remitted to the Licensee.

The user fee shall not be refundable upon prepayment of any debenture by the Licensee.

[48 FR 45017, Sept. 30, 1983; 49 FR 13864, Apr. 9, 1984, as amended at 49 FR 43541, Oct. 29, 1984; 51 FR 21485, June 12, 1986]

§ 107.202 Leverage in excess of three hundred percent.

(a) *Qualification.* In order to qualify for Leverage exceeding three hundred percent of Private Capital, at least sixty-five percent of the Licensee's Total Funds Available for Investment must be invested (or committed) in Venture Capital Financing of Small Concerns: *Provided, however,* That section 301(d) Licensees shall have thirty percent so invested.

(b) *Venture Capital Financing.* "Venture Capital Financing" shall mean:

(1) Equity Securities as defined in § 107.3 with no repurchase requirement for five years, except as may be specifically approved by SBA under § 107.801 for purposes of relinquishing Control over a Small Concern.

(2) Any right to purchase Equity Securities.

(3) Debt Securities or Loans which are subordinated by their terms to all borrowings of the issuer, except borrowings from officers, directors and owners of the Small Concern, or Close Relatives thereof, and have no part amortized during the first three years.

(c) *Total Funds Available for Investment.* The term "Total Funds Available for Investment" shall mean ninety percent of the sum of total current assets and loans and investments on a cost basis net of current maturities. (Based on the Statement of Financial Position, "total current assets" is the aggregate of lines 14 through 23 and "loans and investments on a cost basis net of current maturities" is line 10, column 1 less line 11.) Venture capital investments shall be valued on the same basis as Licensee's assets comprising its "Total Funds Available for Investment". A Financing carried as "assets acquired in liquidation of portfolio securities" or "operating concerns acquired" which originally qualified as venture capital shall retain the venture capital qualification.

(d) *Maintenance of Ratio.* The ratio prescribed by paragraph (a) of this section shall be maintained as of the end of each fiscal year: *Provided, however,* That prepayment of venture capital investments, raising additional Private Capital and additional Leverage recently provided shall be disregarded in determining whether the Licensee meets the foregoing requirements as of the close of its fiscal year. Failure to maintain the ratio prescribed by this section shall be a violation of these regulations.

[48 FR 45017, Sept. 30, 1983; 49 FR 13864, Apr. 9, 1984]

§ 107.203 SBA purchase, sale, or guaranty of securities evidencing Leverage; events of default.

(a) *SBA Disposal of Securities.* SBA may, upon such conditions and for such consideration as it deems reasonable, sell, assign, transfer, or otherwise dispose of any preferred security, debenture, or other security held in connection with Leverage. In such event and upon notice thereof by SBA, Licensee will make all payments of principal and of dividends or interest as shall be directed by SBA. Licensee shall hold SBA harmless from all damage or loss which SBA may sustain by reason of such disposal, limited, however, to the extent of Licensee's liability under such security, plus court costs and reasonable attorney's fees incurred by SBA.

(b) *Leverage Conditions: General.* A Licensee issuing debentures pursuant to section 303 (b) and (c) of the Act after May 2, 1972, or preferred securities after August 16, 1982, shall be deemed to have agreed to the following terms and conditions, as in effect at the time of such issuance and as if fully set forth in such debentures or preferred securities:

(1) Upon written notice by SBA, the entire indebtedness and/or the principal amount of preferred securities of the Licensee issued to, held or guaranteed by SBA may be declared immediately due and payable to SBA upon the happening of any one or more of the following events:

(i) Default in the payment of the principal or interest, under any debenture, note or obligation of the Licensee, issued to, held or guaranteed by SBA;

(ii) Nonperformance or violation by the Licensee, as determined by SBA, of any one or more of the terms and conditions of any loan, obligation or preferred security of the Licensee, issued to, held or guaranteed by SBA, or of any agreement with or conditions imposed by SBA;

(iii) Failure of the Licensee, as determined by SBA, to comply with any one or more of the provisions of the Act or regulations promulgated thereunder, as they may be amended from time to time;

(iv) Failure of the Licensee to notify SBA within twenty days from the date of an event of default or nonperformance by the Licensee under any debenture, note or indebtedness of the Licensee issued to or held by anyone other than SBA.

(2) The entire indebtedness and principal amount of preferred securities of the Licensee issued to, held or guaranteed by SBA shall immediately become due and payable to SBA without notice, presentation or demand, whenever:

(i) Licensee is insolvent; or

(ii) Not having sufficient property to pay all of its debts, Licensee makes a voluntary assignment thereof; or

(iii) Licensee makes any transfer or incurs any obligation that is fraudulent under the terms of 11 USC 548; or

(iv) A petition is filed in commencement of any bankruptcy or reorganization proceeding, receivership, dissolution or other similar creditors' rights proceeding, by or against the Licensee, whichever event shall first occur.

(3) Except with the prior written consent of SBA, Licensee shall not:

(i) Repurchase or retire any of its Private Capital, except as permitted by § 107.802; or

(ii) Make any distribution to its shareholders or partners other than periodic payments out of retained earnings based on the capital contributions of the recipient; or

(iii) Increase the aggregate amount of salaries or other compensation of officers, directors, or employees beyond the amount previously approved by SBA. In applying this provision, compensation to officers, directors, or employees of a wholly-owned corporation shall be deemed paid by the Licensee.

(4) Except with the prior written consent of SBA, Licensee will not employ or tender any offer of employment to, or retain for professional services, for a period of two years after the date of the latest debenture or preferred security issued by Licensee pursuant to section 303 (b) and (c) of the Act (or any SBA assistance as defined in Part 105 of this chapter) any person who on or within one year prior to said date:

(i) Shall have served as an officer, attorney, agent, or employee of SBA; and;

(ii) As such, shall have occuped a position or engaged in activities which SBA shall have determined involved discretion with respect to the granting of assistance under the Act.

(5) Any failure on the part of SBA at any time to require the performance by Licensee of any one or more of the terms or provisions of any debt instrument or preferred security of Licensee issued to, held, or guaranteed by SBA shall in no way affect SBA's right thereafter to enforce the same, nor shall the waiver by SBA of any term or provision of any debt instrument or preferred security of Licensee issued to, held, or guaranteed by SBA be taken or held to be a waiver of any succeeding breach of any such term or provision.

(6) If the Licensee fails to maintain either the capital requirement or the investment ratio requirement under section 303(b)(2) of the Act, and the regulations promulgated thereunder from time to time, then the aggregate amount of the outstanding indebtedness evidenced by any debt instruments or principal amount of preferred securities issued to, held, or guaranteed by SBA which exceeds the maximum amount permitted under section 303(b)(1) shall (subject to the provisions of § 107.202(d)), and upon written notice by SBA, be immediately due and payable to SBA. In the event of such acceleration of payment, SBA in its sole discretion shall determine which preferred securities or debenture instrument or instruments, or parts thereof, shall be subject thereto.

(7) The debentures hereafter issued by a Licensee pursuant to section 303(b) of the Act, and SBA's claims relating thereto, shall be subordinate to all other debts of the Licensee unless such debentures provide otherwise, but shall have priority over all ownership interest in the Licensee upon any dissolution, winding-up, liquidation or reorganization of the Licensee.

(c) *Debenture Conditions—Section 301(d) Licensees.* Paragraph (b) of this section shall be applicable to section 301(d) Licensees obtaining Leverage pursuant to section 303(c) (1) or (2) of the Act: *Provided, however,* That the capital and investment ratio requirements referred to in paragraph (b)(6) shall be those prescribed by section 303(c) of the Act and § 107.202(a) of these regulations.

(d) *Capital Impairment.* In addition to the events of default set forth in paragraph (b) of this section, capital impairment occurring after November 7, 1973 (or, in the case of a section 301(d) Licensee, ninety days from September 30, 1983, shall also constitute an event of default if Licensee fails to give SBA prompt written notice as soon as it knows or should reasonably have known thereof, or if, following such notice, Licensee fails to cure the impairment within time limits set by SBA in writing; *Provided, however,* That a Section 301(d) Licensee whose undistributed net realized earnings deficit exceeds seventy-five percent of private capital within ninety days after September 30, 1983 shall not be deemed capitally impaired for a period of five years after September 30, 1983 unless, during such five-year period, its undistributed net earnings deficit shall exceed 100 percent of private capital. In either such event, SBA may, in its discretion, by written notice declare the entire principal amount of preferred securities and indebtedness of the Licensee, issued to, held or guaranteed by SBA, immediately due and payable. Capital impairment shall be deemed to exist when the undistributed net realized earnings deficit of a section 301(d) Licensee exceeds seventy-five percent, or that of any other Licensee exceeds fifty percent of Private Capital. Treasury stock shall be deducted from paid-in capital stock and paid-in surplus in determining Private Capital. Where unrealized appreciation is not sufficient to offset unrealized depreciation on loans and investments, the resulting unrealized loss on securities held will reduce undistributed net realized earnings.

[48 FR 45017, Sept. 30, 1983; 49 FR 13864, Apr. 9, 1984]

§ 107.204 Collection or compromise of SBA claims.

SBA may, upon such conditions and for such consideration as it deems reasonable, collect or compromise all claims relating to preferred securities or obligations held or guaranteed by SBA, and all legal or equitable rights accruing to it.

§ 107.205 Leverage for Section 301(d) Licensees.

(a) *General.* SBA may provide Leverage to any section 301(d) Licensee through the purchase or guaranty of debentures, or to a section 301(d) Licensee organized as a corporation, through the purchase of nonvoting preferred stock (or nonvoting preferred securities other than stock, but only if applicable law precludes the issuance of nonvoting preferred stock) pursuant to application filed under § 107.201(a)(2).

(b) *Charter requirements for Leveraging.* No Leverage will be extended to any section 301(d) Licensee unless the following matters are appropriately provided for in the Licensee's articles:

(1) *Investment Policy.* Statement of Investment Policy in conformity with section 301(d) of the Act.

(2) *Prior SBA approval to amend articles.* The articles shall not be amended without SBA's prior written approval.

(3) *Additional requirements for nonvoting preferred securities Leverage.* No nonvoting preferred securities may be purchased by SBA from any corporate section 301(d) Licensee unless its articles make appropriate provision for the following additional matters:

(i) *Payment of dividends to SBA.* Subject to the sound discretion of the board of directors, SBA shall be paid from retained earnings an annual three percent dividend on the par value of its preferred securities. Such dividends shall be payable before any amount shall be set aside for or paid to any other class of stock, and shall be preferred and cumulative, so that in the event SBA has received less han three percent in any fiscal year, such dividends shall be payable on a preferred basis from subsequent retained earnings without interest thereon. Before any declaration of dividends or any distribution (other than o SBA), all dividends accumulated and unpaid on preferred securities ssued to SBA shall be paid.

(ii) *Redemption rights.* A section 301(d) Licensee shall be entitled at its ption to redeem in whole or in part referred securities purchased by BA, on any dividend date (after iving SBA at least thirty days written notice) by paying SBA the par value of such securities, but not less than $50,000 par value in any one transaction, and any dividends accumulated and unpaid to the date of redemption.

(iii) *Redemption, liquidation, or distribution of assets.* Before any redemption of securities not purchased by SBA, or liquidation in whole or in part, or any distribution of assets to other stockholders, SBA shall be paid any amounts due pursuant to paragraph (b)(3)(i) of this section, and the par value of its preferred securities; *Provided, however,* That such par value need not be paid to SBA before the distribution of ordinary dividends from retained earnings.

(c) *Sale of debentures to SBA.* Debentures purchased by SBA but not debentures guaranteed by SBA pursuant to section 303(c) of the Act, shall be entitled to a reduced interest rate determined according to section 317 of the Act. Such debentures shall specify the interest rates prescribed by sections 317 and 303(b) of the Act, together with the dates between which each applies. With respect to payment of interest SBA shall have the same priority as applies to debentures purchased or guaranteed under section 303(b) of the Act.

(d) *Preferred Securities Leverage in Excess of 100 percent*—(1) *General.* Subject to the following restrictions, SBA is authorized to purchase preferred securities in amounts in excess of 100 percent of Private Capital, but not in excess of 200 percent of Private Capital:

(i) From any corporate section 301(d) Licensee licensed on or before October 13, 1971; or

(ii) From any corporate section 301(d) Licensee licensed after October 13, 1971, and having Private Capital of $500,000 or more. SBA has no authority to purchase preferred securities in excess of 100 percent of Private Capital from any corporate section 301(d) Licensee licensed after October 13, 1971, if the private Capital of such Licensee is less than $500,000.

(2) *Qualified Investments.* In no event shall the amount of preferred securities purchased by SBA in excess of 100 percent of Private Capital exceed the amount of the Licensee's

funds invested in, or legally committed to, qualified investments. As used herein, "qualified investments" means, subject to §§ 107.320 and 107.801, stock of any class (including preferred stock) or limited partnership interests in eligible small concerns, or shares of any eligible syndicate, business trust, joint stock company or association, mutual corporation, cooperative or other joint venture for profit; or unsecured debt instruments which are subordinated by their terms to all other borrowings (as distinguished from all other debts and obligations) of the issuer.

(3) *Maintenance of Qualified Investment Portfolio.* Any Licensee that has sold preferred securities to SBA in excess of 100 percent of its Private Capital shall maintain its portfolio of "qualified investments" at not less than the amount of such preferred securities. If, as of the end of its fiscal year, the amount of such Licensee's "qualified investments" is less than the amount required by this paragraph (d)(3) the Licensee shall be deemed in violation of these regulations unless the Licensee redeems promptly such excess securities, or unless SBA shall authorize temporarily a lesser amount of "qualified investments."

(e) *Exchange of outstanding debentures for Preferred Stock.* (1) Subject to the conditions applicable to the issuance of preferred securities to SBA, a section 301(d) Licensee may, in SBA's discretion, retire debentures against issuance of preferred securities to SBA. A section 301(d) Licensee proposing to exchange its outstanding debentures shall be required to pay SBA all unpaid interest accruing to the date of the exchange.

(2) Notwithstanding the provisions of the preceding paragraph, debentures purchased or guaranteed by SBA on the basis of funds not includible in Private Capital, as defined in § 107.3, may not be retired against issuance of preferred stock on or after August 16, 1982. Such debentures, to the extent purchased or guaranteed by SBA on the basis of ineligible funds, shall be paid at maturity. SBA may at its discretion extend such maturity, not to exceed fifteen (15) years from the date of issuance if necessary for an orderly liquidation.

(f) *State law.* SBA does not intend that provisions of this section not mandated by the Act shall supersede existing State law. Whenever a party claims that a conflict exists, it shall submit an opinion of independent counsel, citing authorities, for SBA's resolution of the issues involved.

FINANCING OF SMALL CONCERNS (LOAN AND DEBT FINANCING; EQUITY CAPITAL FINANCING; GUARANTIES AND COMMITMENTS)

§ 107.301 Financing term and amortization.

(a) *Minimum period of Financing.* Except as otherwise provided for in these regulations, Financings of Disadvantaged Concerns may be made for a minimum period of four years, the aggregate of such Financings for less than five years not to exceed fifty percent of the Licensee's Portfolio at the end of any fiscal year, determined without regard to prepayments (or similar events beyond the Licensee's control) which occur during that fiscal year,[6] but all other Financings shall be for a minimum period of five years. Voluntary prepayment shall be permitted at any time, but a reasonable prepayment penalty may be agreed upon. (See definition of Cost of Money § 107.3). Any other restriction on prepayment shall require SBA's prior written approval.

(b) *Maximum amortization.* Amortization during the first five years (or during the first three years of an authorized Financing for at least four years) shall not be required at a rate exceeding an accumulated average based on the straight line method of amortization.[7]

§ 107.302 Cost of Money; Loans and Debt Securities.

Subject to lower ceilings prescribed by local law, Cost of Money on Loans and Debt Securities shall not exceed the following:

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[6] For other short-term financing and amortization, see § 107.403(b) (1) and (2).

[7] (Ibid.)

(a) *Loans.* (1) If the current Debenture Rate is 8 percent per annum or lower, Cost of Money shall not exceed 15 percent.

(2) If the current Debenture Rate is in excess of 8 percent per annum, Cost of Money shall not exceed the sum of the current Debenture Rate plus 7 percentage points, but rounded off to the next lowest eighth of one percent.

(b) *Debt securities.* (1) If the current Debenture Rate is 8 percent per annum or lower, Cost of Money shall not exceed 14 percent.

(2) If the current Debenture Rate is in excess of 8 percent per annum, Cost of Money shall not exceed the sum of the current Debenture Rate plus 6 percentage points, but rounded off to the next lowest eighth of one percent.

(c) *Ceiling on specific financing.* The maximum Cost of Money on any specific Financing shall be determined with reference to the Debenture Rate in effect at the time of first disbursement, or when a legally binding written commitment was issued ("current Debenture Rate"), whichever shall first occur. A fluctuating interest rate is nevertheless subject to the maximum Cost of Money limitation in effect at the time or commitment, or of first disbursement if no legally binding written commitment was issued.

(d) *Applicability to existing Financings.* The maximum annual Cost of Money on any Financing made or committed before April 16, 1980 shall in no event exceed the lesser of 15 percent or any lower rate prescribed by local law.

(e) *Commitments.* All commitments for Financing are subject to the provisions of § 107.402.

[48 FR 45017, Sept. 30, 1983, as amended at 51 FR 40001, Nov. 4, 1986]

§ 107.303 Overline limitation.

(a) *General.* Without written SBA approval, the aggregate amount of funds disbursed for securities acquired (exclusive of write-down), and of commitments and guaranties issued for a Small Concern (including affiliated concerns as defined in § 121 3-2 (a) of this chapter) shall not exeed twenty percent of Licensee's Private Capital: *Provided, however,* That for section 301(d) Licensees the limitation shall be thirty percent.

(b) *Increased Limit.* For purposes of this section only, Private Capital may include the net unrealized gains of a Licensee represented by marketable securities and support an additional overline limitation ("increased limit") subject to the following conditions:

(1) "Marketable securities" means securities that are traded on a regulated stock exchange, or that are listed in the Automated Quotation System of the National Association of Securities Dealers (NASDAQ), or that have, at a mimimum, at least three market makers as defined in section 3(a)(38) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(38)) one of which has offices in at least ten States.

(2) Unrealized losses on marketable and unmarketable securities must be deducted from unrealized gains on marketable securities (net unrealized gains).

(3) Valuation of marketable securities shall be at the lowest bid price.

(4) Licensee must have positive retained earnings (undistributed net realized earnings less allowances for losses on loans and investments).

(5) At the time of the first use of this subsection, and thereafter as of the first business day of each calendar quarter as long as Licensee avails itself of this increased limit, it shall retain in its files copies of the NASDAQ listings (or the Wall Street Journal) or written quotations from the market makers quoting the marketable securities which support the increased limit.

(6) By availing itself of this increased limit, Licensee agrees that, in the event the net unrealized gains show a reduction on the first business day of any calendar quarter and for at least thirty days thereafter, below seventy percent of the net unrealized gains, Licensee will (not later than ninety (90) days from such date) cause to be injected sufficient private Capital to restore support for the increased limit or reduce the increased limit of its investments to a point at which no investment exceeds 20 percent of the sum of its Private Capital plus the remaining net unrealized appreciation represented by marketable securities.

(7) Failure to maintain or restore support for the increased limit or to reduce investments as required by paragraph (6) shall be a violation of these Regulations.

Example: On January 15, 1982 the Licensee documents net unrealized gains of $100,000. Licensee adds $100,000 to its Private Capital and increases its overline limitation accordingly. Licensee now makes one or more investments in reliance on this increased limit. Hereafter, on each subsequent first business day of April, July, October, and January, Licensee must document net unrealized gains of a least $100,000. On April 15, 1982 Licensee can document further net unrealized gains for an aggregate of $150,000 and invest pursuant to an increased limit of $30,000 (20% of $150,000). Following the first business day of April, 1983, Licensee documents net unrealized gains of only $120,000. All investments within the incerased limit remain undiminished in the portfolio. Licensee is now required to cause to be injected sufficient cash into Private Capital before July 1, 1983, so that the sum of the remaining net unrealized gains and the added cash equals at least five times the increased limit of its largest investment. In the alternative, Licensee must reduce before July 1, 1983, its "overline " investments made in reliance on this subsection so that none will exceed 20 percent of Private Capital plus $24,000. Any further reduction of net unrealized gains will require additional proportionate injection of cash or reduction of investments.

[48 FR 45017, Sept. 30, 1983; 49 FR 13864, Apr. 9, 1984]

§ 107.304 Size status and nondiscrimination.

No Assistance shall be provided unless: (a) The Licensee and the Small Concern have executed SBA Form 480, Size Status Declaration, including Licensee's determination that applicable size standards have been met, or SBA has determined at the request of the Licensee or such concern that the latter is a Small Concern: and (b) The Small Concern has certified on SBA Form 652-D that it will not illegally discriminate in its operations, employment practices or facilities as set forth in Part 113 of this chapter. Such forms shall be kept available for SBA's examination: *Provided, however,* That the foregoing shall not apply when the Licensee acquires the securities from an underwriter in a public offering (see § 107.404), in which event the Licensee shall keep the prospectus showing the small size status of the issuer as part of its records for SBA's examination.

EQUITY CAPITAL

§ 107.320 Equity securities.

(a) *General.* A Licensee may be a source of equity capital for incorporated and unincorporated small concerns. Such equity capital may be supplied by the purchase of Equity Securities: *Provided, however,* That a Licensee shall not become a general partner in any unincorporated concern, or otherwise become jointly or severally liable for the general obligations of an unincorporated concern, inadvertently or otherwise.

(b) *Options.* A Licensee may acquire options or warrants (including conversion rights) in a Portfolio Concern or in an affiliate of such concern, as defined in § 121.3-2(a) of this chapter. Such options or warrants shall expire not later than six years from the termination of the Licensee's Financing by prepayment or at maturity. For exercise of options after the Portfolio Concern becomes large, see § 107.706.

§ 107.321 Redemption provisions.

Subject to the following restrictions, a Licensee may acquire Equity Securities, options or warrants on terms that may include redemption by the issuer (Put).

(a) No redemption shall be required for the first five years.

(b) The redemption price shall not exceed a price to be agreed upon not later than the date of the Licensee's first disbursement and such price shall not be pre-determined but must be determined by a formula which is legal and reasonable and based on book value or earnings of the Small Concern.

§ 107.322 Refinancing; first refusal on new indebtedness.

Whenever a Licensee purchases Equity Securities from a Small Concern, it may require it to:

(a) Refinance any or all of its outstanding indebtedness so that the Licensee is the only holder of any evidence of indebtedness of such concern, and:

(b) Agree not to incur any new indebtedness without Licensee's approval and affording it an opportunity to finance such new indebtedness: *Provided, however,* That the Licensee shall allow appropriate exceptions for open account or other short-term credit.

GUARANTIES AND COMMITMENTS

§ 107.401 SBIC guaranty of Loans.

(a) Subject to § 107.301(a) (Minimum Period of Financing), a Licensee may guaranty to any non-Associate creditor the monetary obligation of a Small Concern: *Provided, however,* That:

(1) No such guaranty shall be issued where Licensee would become subject to State regulation as an insurance, guaranty or surety business;

(2) No such guaranty may be issued except at the request of the Small Concern or where necessary to protect Licensee's existing investment;

(3) Any direct Financing plus the amount of the guaranties does not exceed the overline limits under § 107.303;

(4) The total financing cost to the Small Concern may not exceed the limits set by § 107.302;

(5) The total guaranties issued and outstanding for all Small Concerns shall not exceed one hundred percent of Private Capital.

(6) A Licensee may guarantee an Associate creditor on the same conditions pursuant to § 107.903.

[48 FR 45017, Sept. 30, 1983; 49 FR 13864, Apr. 9, 1984]

§ 107.402 Commitments.

(a) *General.* A Licensee is authorized to enter into a commitment to furnish Financing to a Small Concern. Such commitment shall be in writing and a reasonable commitment fee may be charged.

(b) *Repayment period as to funds advanced pursuant to Licensee's commitment.* (1) Where a Licensee enters into a commitment to finance a Small Concern, disbursement to be made at the latter's request, it shall be lawful (notwithstanding the maturity provisions of § 107.301(a)) to provide for repayment as follows:

(i) Funds advanced during the first two years of the commitment period shall become payable not less than five years after date of the commitment; and

(ii) Funds subsequently advanced shall become payable not less than three years of the respective disbursement dates.

(c) Amortization of each disbursement shall not be required at an annual average rate in excess of the principal amount thereof divided by the number of years of the respective repayment period.

§ 107.403 Other permissible Financing.

(a) *Authorization.* A Licensee may furnish Financing pursuant to paragraph (b) of this section, within the overline limits of § 107.303, but the aggregate of all such Financing to any one or all Small Concerns shall not at any time exceed twenty percent of the Licensee's total adjusted assets. "Total Adjusted Assets" means total assets reduced by all outstanding Leverage provided by SBA and current liabilities.

(b) *Investments permitted.* Notwithstanding §§107.301 (a) and (b) and 107.320, a Licensee may make the following investments in Small Concerns:

(1) *Short-term Financing.* Financing with a term of less than five years when it constitutes interim financing in contemplation of long-term Financing of a Small Concern, the protection of prior investments or financing ownership change pursuant to § 107.711. The maximum aggregate period for this short-term financing cannot exceed one year. This paragraph (b)(1) supplements the authority to make short-term investments in Disadvantaged Concerns under § 107.301(a).

(2) *Amortization rate of forty percent per annum.* Financing with the minimum term of five years amortized at a rate not exceeding forty percent per annum of the declining principal balance outstanding, except for the final year of the term.

(3) *Securities purchased from nonissuer.* Securities of a Small Concern purchased from a seller other than the

issuer or his underwriter (see § 107.404), when such acquisition constitutes a reasonably necessary part of the overall sound financing of such concern pursuant to the Act or when the securities are acquired to finance a change of ownership pursuant to § 107.711. See also § 107.304 regarding size status and nondiscrimination certification. See § 107.404 for purchases of securities through or from an underwriter.

[48 FR 45017, Sept. 30, 1983; 49 FR 13864, Apr. 9, 1984]

§ 107.404 Purchase of Securities through or from underwriter.

A Licensee may purchase securities issued by a Small Concern through or from an underwriter, within 90 days of the date a public offering is first lawfully made: *Provided, however,* That (a) such purchase may not be made at more than the original public offering price; (b) the underwriter certifies in writing whether it is an Associate of any Licensee, that the portion of the offering purchased by the Licensee represents only newly issued Securities, and that an amount equal to the amount paid by the Licensee (less reasonable and customary underwriting and related charges permitted to be charged by the underwriter in connection with the Licensee's purchase) has been, or will be, paid to the small concern; (c) if the underwriter is an Associate of any Licensee, no fees or charges may be retained by such underwriter with respect to the portion of the offering purchased by any Licensee; and (d) Licensee maintains records available for SBA inspection showing relevant details of the transaction, including date, price, commissions, etc. paid, if any, and underwriter's certificate. See also § 107.304 regarding size status and nondiscrimination certification.

MANAGEMENT SERVICES

§ 107.501 Management services.

(a) *General.* Management services may be advisory only or may, subject to §107.801, include performance of any technical service relating to the financial, management, administrative, or operating activity of a Small Concern. Services shall be deemed "advisory only" where the Small Concern is free to accept or reject the advice rendered.

(b) *Conditions.* (1) Where a Licensee directly or indirectly provides management services to a Small Concern and such services are advisory only, no SBA approval is required. The Licensee shall maintain a record for examination by SBA of the time spent and charges made for such services and such charges shall not exceed comparable charges by established professional non-Licensee consultants.

(2) Where a Licensee directly or indirectly provides management services to a Small Concern that is being Financed by it and such services are not advisory only, such services shall be performed pursuant to a written contract with such Small Concern and the contract shall be approved in advance by the board of directors or principals of the Small Concern and by SBA. Such contracts shall thereafter be approved annually by the board of directors or principals of the Small Concern and the Licensee. In the event of a material change, the revised contract shall also be approved in advance by SBA. A doubt regarding materiality of a change shall be resolved by submission to SBA. An agreement to perform such services for a Small Concern that is not being Financed by the Licensee shall not require such annual approval. Records shall be kept and charges made in accordance with paragraph (b)(1) of this section.

(3) Where an Associate of a Licensee provides management services to a Small Concern that is being Financed by such Licensee and such services are advisory only, such advice shall be rendered pursuant to a written contract, and the contract shall be approved in advance by the board of directors or the principals of the Small Concern and by SBA. Such contracts shall thereafter be approved annually by such board of directors, or principals and the Licensee. In the event of a material change, the revised contract shall also be approved in advance by SBA. A doubt regarding materiality of a change shall be resolved by submission to SBA. The Licensee shall maintain records of time spent and charges

made in accordance with paragraph (b)(1) of this section. Such services rendered to a Small Concern not being Financed by such Licensee are not subject to regulation by SBA until such time as Financing is provided.

(4) Where an Associate of a Licensee provides management services to a Small Concern that is being Financed by such Licensee and such services are not advisory only, such services shall be performed pursuant to a written contract, and the contract shall be approved in advance by the board of directors or the principals of the Small Concern and by SBA. Such contracts shall thereafter be approved annually by the board of directors or principals of the Small Concern and the Licensee. In the event of a material change, the revised contract shall also be approved in advance by SBA. A doubt regarding materiality of a change shall be resolved by submission to SBA. Records shall be kept and charges made in accordance with paragraph (b)(1) of this section. Such services rendered to a Small Concern not being Financed by the Licensee are not subject to regulation by SBA until such time as Financing is provided.

(c) *Management Services Corporation.* A Licensee may organize a corporation solely to provide management services. All of its stock shall be owned and held by such Licensee, and the Licensee shall be responsible for the compliance by such corporation with the Act and regulations. In the case of a Debtor Licensee, the remuneration paid to officers, directors and employees of such corporation and any changes therein, shall be subject to SBA written approval. Reports submitted to SBA by the Licensee shall reflect consolidated figures when both are corporations. The corporation shall maintain adequate records and make any separate reports required by SBA and it shall submit to SBA examination. Failure to do so shall be deemed noncompliance by the Licensee. Licensee's investments in and receivables from such corporation shall not exceed 3 percent of the Licensee's Private Capital.

[48 FR 45017, Sept. 30, 1983; 49 FR 13864, Apr. 9, 1984]

CONTROL OF LICENSEE

§ 107.601 Changes in ownership or control of Licensee.

(a) *General.* Transfer of Control over a Licensee by any means whatsoever shall be subject to prior written approval of SBA.

(b) *Prior approval requirements.* Prior written approval of SBA shall be required in case of:

(1) A proposed transfer which would result in the beneficial ownership by any Person, or group of Persons acting in concert, of ten or more percent of any class of its stock or partnership capital; or

(2) Any proposed transfer which results in a change in Control over a Licensee.

(c) *Acts prohibited.* Without prior written approval of SBA, no such transaction shall be consummated and no officer, director, employee or other Person acting on the Licensee's behalf shall:

(1) Register on its books any transfer of ownership interest to the proposed new owner (or owners); or

(2) Permit the proposed new owner (or owners)[4] to exercise voting rights with respect to said ownership interest or participate in any manner in the conduct of Licensee's affairs.

(d) *Terms used:* (1) "Transfer," "stock transfer," "transfer of shares," or "ownership interest" refers to the aggregate amount of shares or partnership capital which any Person or group of Persons acting in concert transfers or undertakes to transfer during any six month period.

(2) "Exercise of voting rights" with respect to ownership interest of Licensee's capital shall include directly or indirectly procuring or voting any proxy, consent or authorization as to such voting rights at any shareholders' or partnership meeting.

(3) "Participation in the conduct of Licensee's affairs" shall include control over Licensee's books, records, funds or other assests; participation directly or indirectly in any disposition thereof; or serving as an officer, director, partner, employee or agent of such Licensee.

(e) *Transferors' Liability.* SBA may in its discretion as a condition of a Licensee's Leverage, require the Control Person(s) to assume in writing personal liability for such Licensee's Leverage, effective only in the event of their direct or indirect participation in any violation of the requirements of this section applicable to transfers of Control, and terminable if SBA subsequently approves the transfer of Control and so notifies the transferor(s) in writing.

(f) *Application for approval.* Written application for prior SBA approval shall be promptly made by the Licensee and by other parties in interest. A processing fee of $5,000 shall accompany any application for approval of one or more transfers of stock or of partnership interests that will result in acquisition of control over the Licensee by a Person(s) not previously approved by SBA. For applications not involving control, see § 107.102.

(g) *Public Notice.* SBA shall publish notice in the FEDERAL REGISTER concerning the application for approval of a proposed transfer of Control over a Licensee, including such appropriate information as the name and location of the Licensee and of the proposed transferees who will own ten or more percent of any class of its Private Capital. The notice shall provide an opportunity to submit written comments. A similar notice shall also be published in a newspaper of general circulation in the city or locality where the Licensee is or will be located (or conduct operations), and a certified copy shall be furnished to SBA within ten days.

(h) *Standards governing SBA approval.* (1) SBA may, as a condition of approving a proposed transfer of Control, require an increase in Licensee's Private Capital.

(2) SBA may condition its approval on the assumption in writing by the new owners of contractual liability pursuant to paragraph (e) of this section, and such other requirements as SBA deems necessary.

(3) SBA approval shall be contingent upon full disclosure of the real parties in interest, the source of funds used, and other data requested by SBA.

(i) *Reporting transactions involving possible transfer of Control.* The Licensee shall, upon obtaining knowledge thereof, promptly report to SBA the facts pertaining to any transaction or event which affords reasonable grounds for belief that a transfer of Control over such Licensee is likely to occur. If there is any doubt as to whether a particular transaction or event will result in a change of Control, such doubt shall be resolved in favor of reporting the facts to SBA.

[48 FR 45017, Sept. 30, 1983; 49 FR 13865, Apr. 9, 1984]

§ 107.602 Common control.

Without prior written SBA approval, a Licensee shall not have an officer, director, manager, nor a Control Person or a stockholder or partner owning or controlling directly or indirectly ten or more percent of its stock or ownership interest who at the same time is:

(a) An officer, director, manager or Control Person, or such stockholder or partner of another Licensee; or

(b) An officer or director of any Person which directly or indirectly controls, or is controlled by, or is under common Control with, another Licensee: *Provided, however,* That officerships or directorships in, and management, ownership or Control of stock or partnership capital of, a section 301(d) Licensee shall be excepted from the foregoing provisions.

[48 FR 45017, Sept. 30, 1983; 49 FR 13865, Apr. 9, 1984]

§ 107.603 Pledge of Licensee's shares.

Whenever ten or more percent of a Licensee's Private Capital is pledged by any Person (or group of Persons acting in concert) as collateral for indebtedness, and such pledge does not involve any transfer for which prior approval is required under § 107.601, written notice of the terms of such transaction shall be furnished to SBA by the pledgor within thirty calendar days from the date of the pledge.

LAWFUL OPERATIONS

§ 107.701 Amendments to Act and regulations.

A Licensee shall be subject to all existing and future provisions of the Act and these regulations, including Parts 112, 113 and 116 of Title 13 of the Code of Federal Regulations.

§ 107.702 Other laws.

Each Licensee shall comply with all applicable State and Federal law.

§ 107.703 Operations under Act.

A Licensee shall engage only in the activities contemplated by the Act and in no other activities.

§ 107.704 Identification as an SBIC.

Any written communications made by a Licensee shall identify that Licensee as "a Federal Licensee under the Small Business Investment Act of 1958."

§ 107.705 Consideration for issuance of Licensee securities.

(a) *General.* A Licensee may issue its securities or other ownership interests, including stock options to management and employees, for:

(1) Cash;

(2) Direct obligations of, or obligations guaranteed as to principal and interest by, the United States;

(3) Securities of which it is the issuer, in connection with a reclassification approved by SBA;

(4) Services previously rendered or to be rendered to the Licensee not to exceed the fair value thereof;

(5) Physical assets to be currently employed in Licensee's operation at the fair market value thereof;

(6) As a dividend; and

(7) In connection with a merger, consolidation, or reorganization approved by SBA: *Provided, however,* That any evidence of ownership interest issued as a part of Licensee's minimum captal pursuant to § 107.101(d) must be paid for in cash or securities permitted by the last sentence of section 308(b) f the Act; *And provided, further,* That section 301(d) Licensee which has reeived Portfolio securities from a paricipant Licensee pursuant to 107.712(c), may issue shares for such securities at their cost or fair market alue, whichever is lower.

(b) *Stock options.* (1) Licensees may sue stock options. A 1940 Act Compay or a 1980 Act Company may issue stock options as permitted under such Acts or orders issued thereunder.

(2) *Stock options not deemed compensation.* Stock options issued by any Licensee including a 1940 or 1980 Act company, shall be deemed not to constitute "compensation" for purposes of any requirement of prior written consent of SBA with respect to increases of salaries or other compensation beyond the amounts approved by SBA.

§ 107.706 Retention of investments.

A Licensee may retain its investment in a concern which qualified as small at the time of initial financing, but which subsequently became large. Securities received in connection with a portfolio concern's merger, consolidation, or affiliation with a large business may be retained until Licensee has recovered its investment plus a reasonable return thereon, and thereafter, so long as continued ownership does not interfere with the Financing of Small Concerns. Subject to § 107.303, additional Financing may be provided only to the extent necessary (a) to honor a commitment made while the concern was small, or (b) to protect Licensee's original investment, or (c) to exercise stock options or other rights to purchase Equity Securities pursuant to such options or rights acquired as part of the initial Financing.

§ 107.707 Purchases of securities from another Licensee.

A Licensee may exchange with or purchase for cash from another Licensee Portfolio securities (or any interest therein): *Provided, however,* That: (a) Licensee shall not have at any time more than one-third of its total assets (valued at cost) invested in such securities; and (b) the amount for which the selling Licensee may be contingently liable shall be included in its overline limit under § 107.303.

§ 107.708 Deposits and Investments of idle funds.

Except as hereinafter set forth, all funds of a Licensee shall be deposited without delay in an account in a financial institution insured by the Federal Deposit Insurance Corporation (FDIC) or by the Federal Savings and Loan Insurance Corporation (FSLIC). Funds of a Licensee not invested in Small Concerns and not reasonably needed for its day-to-day operations shall be invested in (a) direct obligations of, or obligations guaranteed as to principal and interest by the United States, the remaining maturities of which do not exceed fifteen months; or (b) in certificates of deposit maturing within one year or less, or in an insured deposit account of an institution insured by the FDIC or FSLIC; or (c) deposited in a savings account subject to a withdrawal restriction not to exceed one year in any institution insured by the FDIC or FSLIC: *Provided, however,* That (1) a Licensee may maintain a petty cash fund of up to $500 and (2) corporate assets of a corporate general partner not invested in the Licensee shall be excluded from the time limits imposed by this section.

§ 107.709 Investment Adviser/Manager.

(a) *General.* A Licensee may employ an Investment Adviser/Manager as defined in § 107.3, subject to the supervision of the Licensee's Board of Directors or general partner and shall furnish SBA with a copy of the contract for prior written approval. Services performed may include management and operating activities. The contract shall specify the services to be rendered to the Licensee and to Portfolio Concerns, and the basis for computation of compensation. Such contracts shall thereafter be approved annually by the board of directors or principals of the Licensee. In the event of a material change, the revised contract shall be approved in advance by the Licensee and SBA. A doubt regarding materiality of change shall be resolved by submission to SBA.

(b) *Common Manager.* Two or more Licensees may, with prior written SBA approval, employ the same Investment Adviser or Manager.

§ 107.710 Assets in liquidation.

(a) *Timely Disposal.* A Licensee shall dispose of assets acquired in total or partial liquidation of a Portfolio asset, within a reasonable period of time.

(b) *Preservation of Assets.* (1) A Licensee may incur reasonably necessary expenditures for maintenance and preservation of such assets, and

(2) A Licensee may, subject to prior written SBA approval, incur reasonably necessary expenditures for improvements to render such assets saleable: *Provided, however,* That aggregate expenditures made pursuant to paragraphs (a) and (b) of this section plus Licensee's total investment attributable to such assests, shall not exceed its overline limit under § 107.303, except as specifically approved in writing by SBA.

(3) In addition to the amounts authorized by paragraphs (a) and (b) of this section, a Licensee may make the following required expenditures allocable to such assets in an aggregate amount which, together with its total investment attributable thereto, and its expenditures pursuant to paragraphs (a) and (b) of this section do not exceed 35 percent of its Private Capital, except as specifically approved in writing by SBA: Prior mortgage interest; principal payments; taxes and necessary insurance coverage.

(c) *SBA Approval.* Application for SBA approval under paragraphs (b)(2) and (b)(3) of this section shall specify all expenses estimated to be necessary pending disposal of the assets.

[48 FR 45017, Sept. 30, 1983; 49 FR 13865, Apr. 9, 1984]

§ 107.711 Financing changes of ownership.

A Licensee may finance a change of ownership in a Small Concern when in the reasonable judgment of the Licensee it will promote the sound development or preserve the existence of a Small Concern as such; or will assist in the creation of a Small Concern as a result of a corporate divestiture; or will facilitate ownership in a Disadvantaged Concern. For restrictions governing purchases from nonissuer, see §107.403.

§ 107.712 Section 301(d) licensee wholly or partly owned by Licensee companies.

A Section 301(d) Licensee may be licensed to operate as the subsidiary of one or more Licensee companies (participant Licensee), with or without non-Licensee participation, subject to the following conditions:

(a) *Application.* In reviewing a license application, SBA will consider the effect on the participant Licensee of its capital contribution to the proposed Section 301(d) Licensee.

(b) *Participant Licensees.* Each participant Licensee shall own at least twenty percent of the voting securities of the proposed Section 301(d) Licensee, and such ownership shall constitute a presumption of active participation. Licensees proposing to own less than twenty percent of such voting securities may demonstrate to SBA's satisfaction that they will be active participants.

(c) *Capital contribution.* The capital contribution of a participant Licensee which is no part of the minimum capital ($1,000,000) of the Section 301(d) Licensee, may (notwithstanding §107.705(a)) be represented by securities of Small Concerns eligible for investment by a Section 301(d) Licensee, at cost or fair market value, whichever is lower. Assumption by the proposed Section 301(d) Licensee of any part of such participant Licensee's indebtedness held or guaranteed by SBA will not be permitted. A capital contribution shall, for purposes of the participant Licensee's Leverage be treated as a reduction of its capital, and shall not justify the retention of Leverage by such participant Licensee.

RESTRICTED ACTIVITIES

§ 107.801 Control of Small Concern.

(a) *General.* The Act does not contemplate that Licensees shall operate business enterprises or function as holding companies exercising control over such enterprises. Accordingly, neither a Licensee, nor a Licensee and its Associates, nor two or more Licensees may, except as hereinafter set forth, assume Control over a Small Concern pursuant to management agreements, voting trusts, majority representation on the board of directors, or otherwise.

(b) *Presumption of Control.* Control over a Small Concern will be presumed to exist whenever a Licensee or a Licensee and its Associates, or two or more Licensees, own or Control, directly or indirectly, voting securites equivalent to:

(1) Fifty percent or more of the outstanding voting securities, if held by fewer than fifty shareholders; or

(2) More than twenty-five percent or a block of twenty or more percent which is as large as or larger than the largest other outstanding block of such securities, if held by fifty or more shareholders.

(3) Potential ownership of voting securities through options or conversion privileges shall not be considered in determining whether a presumption of control exists. This presumption may be rebutted by evidence satisfactory to SBA.

(c) *Temporary Control permitted.* A Licensee may acquire temporary Control only where reasonably necessary for the protection of its investment.

(d) *Plan to relinquish Control.* A Licensee may assume Control pursuant to paragraph (c) of this section only if it has entered into a written plan, enforceable by the small concern or its shareholders, providing for relinquishment of Control within a reasonable period, not to exceed seven years, without prior written SBA approval of any extension prior to the end of such period. Such plan shall recite the facts and circumstances necessitating Control for the protection of the Licensee's investment, and shall be filed with SBA and the Small Concern within thirty days after Control is acquired, subject to SBA's post approval as to form and substance, including fairness and the necessity for Control as a condition for the continuation of the license and shall be deemed approved unless Licensee is otherwise notified within ninety days after its receipt by SBA. Where an approved plan later becomes inadequate, a revised plan shall be submitted for SBA's approval. SBA approval shall be contingent upon disclosure of all relevant facts and be subject to such conditions as SBA may prescribe.

(e) *Enforcement actions.* A divestiture plan shall not interfere with Licensee's enforcement of its legal rights against a Portfolio Concern. If the Licensee retains or acquires Control through enforcement action, it shall immediately notify SBA and submit within thirty days a divestiture plan pursuant to paragraph (d) of this section for SBA approval. Subject to § 107.904, such plan may be negotiated with parties other than the Small Concern or its owners.

(f) *Additional Financings.* A Licensee which has assumed Control of a Small Concern may later provide additional Financing, without an exemption under § 107.903(b)(1), and shall within 30 days resubmit its divestiture plan for SBA approval only where the additional Financing requires significant changes in such SBA approved plan on file in order to effect divestiture of Control.

(g) *Control in excess of seven years.* SBA approval pursuant to paragraph (d) of this section for extension of Control in excess of seven years will only be granted if unique circumstances are demonstrated to SBA's satisfaction. Examples of such circumstances are (1) the former owners abandoned the Small Concern or became incapacitated; or (2) the only other available option is the extinction of the Small Concern as such.

§ 107.802 Voluntary capital decrease.

Without prior written approval, a Licensee shall not voluntarily reduce its Private Capital except that a Licensee in any one fiscal year may reduce its capital in an amount not exceeding two percent:" *Provided, however,* That the amount of such reduction may not reduce the Licensee's Private Capital below the minimum required by the Act nor cause the Licensee to retain excess Leverage contrary to Section 303 of the Act.

§ 107.803 Mergers, consolidations, and reorganizations.

Without prior written SBA approval, a Licensee may not merge, consolidate or reorganize.

§ 107.804 Financing of farm land purchases.

Without prior written SBA approval, a Licensee shall not, after September 8, 1976, provide financing to a Small Concern for the acquisition of farm land. For purposes of this section, farm land shall mean land which is or is intended to be used for agricultural or forestry purposes, such as the production of food, fiber, or wood, or is so taxed or zoned.

PROHIBITIONS

§ 107.901 Prohibited uses of funds.

No funds may be provided to a Small Concern:

(a) *Relending, reinvesting, etc.* For relending or reinvesting, if its primary business activity involves, directly or indirectly, providing funds to others, the purchase of debt obligations, factoring, or long-term leasing of equipment with no provision for maintenance or repair: *Provided however,* That Venture Capital Financing (as defined in § 107.202(b)) of any Disadvantaged Concern engaged primarily in relending or reinvesting activities shall be permitted, except for banks and savings and loan associations not insured by agencies of the Federal Government, and agricultural credit companies. Without SBA's prior written approval, all financings pursuant to this proviso shall not exceed the Licensee's Private Capital as of the close of any full fiscal year.[8]

(b) *Financing Licensees.* Directly or indirectly, for purchasing stock in or otherwise providing capital for a Licensee, or to repay an indebtedness to accomplish such purpose.

(c) *Real estate.* (1) If the Small Concern is classified under Major Group 65 (Real Estate) of the SIC Manual except for:

(i) Subdividers and developers (other than cemetary subdividers and developers);

(ii) Title abstract companies; and

(iii) Agents, brokers and managers, or

(2) If the Financing will be used by a Small Concern eligible under paragraph (c)(1) of this section to acquire realty or discharge an obligation relating to the prior acquisition of realty unless such realty is to be promptly and substantially improved for sale to

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[8] 1940 Act Companies are reminded that sections 12(d) (2) and (3) of that Act impose additional restrictions on certain investments otherwise permitted by this § 107.901(a).

others: *Provided, however,* That prompt improvement shall not be required where an adverse change of circumstances beyond the Small Concern's control makes leasing necessary, pending improvement or sale at the earliest feasible date. Realty acquired for sale which is promptly and substantially improved, may be leased pending sale at the earliest feasible date, where such adverse change makes immediate sale impracticable. Evidence of such adverse change shall be kept for SBA examination. Improvement shall, for the purposes of this paragraph, be deemed prompt and substantial if:

(i) An amount equal to fifty or more percent of the Financing is used for improvements; and

(ii) Such improvements are undertaken within one year from date of acquisition or date of Financing, whichever is later.

(d) *Public interest.* For purposes contrary to the public interest, including but not limited to activities which are in violation of law, or inconsistent with free competitive enterprise.

(e) *Foreign investment.* For use outside the United States: *Provided, however,* That a Licensee may provide funds to a domestic Small Concern:

(1) To acquire abroad materials and industrial property rights for a domestic operation; or

(2) For foreign branch operations and foreign joint ventures or for transfer to a controlled foreign subsdiary, so long as at least fifty-one percent of the assets and activities of such concern will remain within the United States.

(f) *Passive businesses.* If that concern is not engaged in a regular and continuous business operation; *Provided, however,* That this prohibition hall not apply to any Small Concern wholly owning another eligible Small Concern engaged in a regular and continuous business operation.

(g) *Associated supplier.* If fifty or more percent of the funds (or funds of he Small Concern released by such Financing) are used to purchase goods r services from a supplier which is an ssociate of the Licensee: *Provided, owever,* (1) Such funds may not be sed to purchase capital goods from an Associate supplier; (2) That in the case of a section 301(d) Licensee, such limit shall be seventy-five percent; and (3) Goods and services shall be at a price no greater than that charged other customers of the associate supplier.

[48 FR 45017, Sept. 30, 1983; 49 FR 13865, Apr. 9, 1984]

§ 107.902 Inactive Licensees.

(a) *Active Operations.* The Act contemplates that a Licensee shall conduct active operations to meet the needs of Small Concerns. Accordingly, inactivity constitutes a violation of these regulations.

(b) *Activity Test.* A Licensee which on the close of any full fiscal year has more than twenty-five percent of its assets (valued at cost) in idle funds (§ 107.708) is inactive if it has not, during the past eighteen months, provided Financing aggregating at least twenty-five percent of the average amount of its said idle funds; *Provided, however,* That subject to SBA approval, a Licensee may maintain a larger percentage of idle funds. Approval may be granted in appropriate cases such as prepayments, raising of additional capital and Leverage recently received.

§ 107.903 Conflicts of interest.

(a) *General.* Self-dealing to the prejudice of the Small Concern, or of a Corporate Licensee or its shareholders, or, in the case of an Unincorporated Licensee, the partnership or its members, or of SBA, is prohibited.

(b) *Prohibitions.* Except where a written exemption may be granted by SBA in special instances in furtherance of the purposes of the Act:

(1) A Licensee shall not, directly or indirectly, provide Financing to any of its Associates.

(2) A Licensee shall not, directly or indirectly, provide Financing to an Associate of another Licensee if an Associate of the first Licensee receives, has received, or is about to receive (including receipt pursuant to any understanding, agreement, or cross-dealing, reciprocal or circular arrangement) any direct or indirect Financing or

commitment for Financing from such other Licensee or a third Licensee.

(3) No Licensee or any of its Associates shall directly or indirectly borrow money from:

(i) A concern Financed by such Licensee, or

(ii) An officer, director, or owner of ten or more percent equity interest in such concern; or

(iii) A Close Relative of such officer, director, or equity owner.

(4) No Licensee shall directly or indirectly provide Financing to discharge or to free other funds for use in discharging an obligation to an Associate of the Licensee: *Provided, however,* That the foregoing shall not apply to transactions by Associate Lending Institutions in the normal course of business involving lines of credit or short-term Financing.

(5) No Licensee shall directly or indirectly Finance, except as permitted by § 107.901(g), the purchase of property from an Associate of the Licensee.

(c) *Joint Financing with Associate.* (1) A Licensee may provide Financing to a non-Associate also Financed by an Associate of such Licensee contemporaneously or within six months before or after the Licensee's Financing, but only on terms not less favorable to the Licensee than to the Associate. Licensee shall retain written evidence of the entire transaction. Where the Associate's Financing is of a different kind, the burden shall be on the Licensee to show that the terms of its Financing were at least as favorable as those of its Associate's Financing: *Provided, however,* That the foregoing shall not apply to transactions by Associate Lending Institutions in the normal course of business involving lines of credit or short-term Financing.

(2) The six months rule of paragraph (g) of the definition of "Associate of a Licensee" in section 107.3 shall not apply to an initial joint Financing pursuant to paragraph (1) of this subsection.

(d) *Compensation to Associates.* Without the prior written approval of SBA and subject to any limitations or restrictions of Federal or State law governing conflicts of interest and fiduciary obligations, no Associate of a Licensee shall receive from a Small Concern, directly or indirectly, any compensation in connection with Assistance rendered by such Licensee or anything of value for procuring, attempting to procure, or influencing Licensee's action with respect thereto.

(e) *Public notice.* Before SBA grants an exemption under this section, the Licensee shall publish in a newspaper of general circulation in the locality most directly affected by the transaction, a notice prescribed by SBA, and furnish a certified copy to SBA within ten days; SBA shall publish a similar notice in the FEDERAL REGISTER.

(f) *Protection of investment.* Nothing contained in this section shall preclude a Licensee from designating an Associate to serve as an officer, director or in any other capacity in the management of a Portfolio Concern to protect its investment: *Provided, however,* That such Associate has no other direct or indirect financial interest that exceeds, or has the potential to exceed, three percent of the Portfolio Concern's equity and has not served as an officer or director or in any other capacity in the management of such concern for more than thirty days prior to such Financing. This proviso may be waived by SBA's prior written approval. Remuneration or anything of value received by such Associate (excluding directors fees, expenses and distributions attributable rateably to the Associate's ownership of the Portfolio Concern's equity) from the Small Concern shall inure to the benefit of the Licensee. The Licensee shall identify the individual Associate so designated in its records pursuant to Section 107.1002.

(g) *1940 and 1980 Act Companies.* A 1940 and 1980 Act Company which has been granted an exemption by the Securities and Exchange Commission with regard to a transaction described in this section shall be exempt therefrom: *Provided, however,* That the Licensee shall promptly notify SBA and publish notice thereof pursuant to paragraph (e) of this section.

§ 107.904 Disposition of assets to Licensee's Associates or to competitors of Portfolio Concern.

(a) *Sale to Associate.* Except with a prior written exemption from SBA in special instances, a Licensee shall not dispose of assets (including assets in liquidation) to any Associate. As a prerequisite to such exemption, the Licensee must demonstrate that the proposed terms of disposal are no less favorable to it than are obtainable elsewhere.

(b) *Sale to Competitor.* Except with prior written approval of the Portfolio Concern which is not Controlled by the Licensee, or of SBA, a Licensee shall not dispose of Portfolio securities to a competitor of such concern. The particulars of any such disposal shall be promptly reported to SBA.

§ 107.905 No Government sponsorship.

No Licensee shall represent or imply in any manner that any evidence of ownership interest issued or obligation incurred by it has been approved by the United States, or any agency or officer thereof, and a statement to such effect shall be included in any solicitations to investors.

§ 107.906 Violations based on false filings and nonperformance of agreements with SBA.

The following shall constitute a violation of these regulations:

(a) *Nonperformance.* Nonperformance of any of the requirements of any debenture or preferred security issued to or guaranteed by SBA, or any written agreement with SBA.

(b) *False Statement.* Any false statement knowingly made, or misrepresentation or failure to state a material fact necessary in order to make a statement not misleading in the light of the circumstances under which the statement was made, in any document submitted to SBA.

EXAMINATIONS, ACCOUNTS, RECORDS AND REPORTS

§ 107.1001 Examination and fees.

(a) *Examinations.* Examinations of Licensees shall be initiated by SBA pursuant to section 310(b) of the Act. Licensees shall make all books, records and other pertinent materials available for the conduct of such examination.

(b) *Fees.* Examination fees will be assessed for examinations made in accordance with the Act. As a general rule, SBA will not assess examination fees for special examinations to obtain specific information.

(c) *Rates.* The fee structure provides rates based on the Licensee's assets as of the date of the latest certified financial statement submitted to SBA before the examination. The rate table is as follows:

Total assets of licensee	Base rate	Percent of assets
$500,000 or less	$800	+0.
$500,001 to $1,000,000	800	+0.12 over 500,000
$1,000,001 to $3,000,000	1,400	+0.030 over 1,000,000
$3,000,001 to $5,000,000	2,000	+0.016 over 3,000,000
Over $5,000,001	2,320	+0.006 over 5,000,000

For example, a Licensee with total assets of $2,000,000 would pay an examination fee of $1,700 ($1,400 + 0.030% of $1,000,000).

(d) *Users' Fee.* Whenever the length of time required for an examination is excessive because of a lack of cooperation by the Licensee or because of the condition of the Licensee's records, in the judgement of SBA an additional fee, not to exceed $250 per day for such time, may be assessed.

§ 107.1002 Records and reports.

(a) *Records.* Current financial records including books of account are to be maintained in all material respects in accordance with SBA's system of Account Classifications. All financial records, and minutes of meetings of stockholders, directors, executive committees, or other officials including partners of an Unincorporated Licensee, and all documents and supporting material relating to Licensee's transactions shall be kept at its principal office: *Provided, however,* That Portfolio items held by a custodian pursuant to written agreement shall be excepted from this requirement. All financial reports furnished to SBA shall make complete disclosure of all matters relevant to the Act and regulations.

(b) *Preservation of records.* Each Licensee shall preserve, for the periods hereinafter specified and in a manner that permits the immediate location of any record, such documents which are the basis for financial statements required by paragraph (e) of this section, and of the accompanying independent public accountant's certificate. Each Licensee shall:

(1) Preserve for a period of at least twenty years:

(i) All general and subsidiary ledgers (or other records) reflecting assets and valuation, liability, capital stock and surplus, income, and expense accounts;

(ii) All general and special journals (or other records forming the basis for entries in such ledgers); and

(iii) The Articles, bylaws, license application, and all minute books, certificates evidencing ownership or stubs relating thereto, ownership ledgers and ownership transfer registers, such documents to be kept readily accessible for the first two years.

(2) Preserve for a period of at least six years following final disposition of the related loan or investment, all applications for Financing; size status declarations; lending, participation, and escrow agreements; Financing instruments; capital stock certificates and warrants of Small Concerns not surrendered or exercised; and all other documents and supporting material relating to such loan or investment, including correspondence, such documents to be kept readily accessible for the first two years.

(3) Preserve for a period of at least six years all vouchers, checkbooks, bank statements, cancelled checks, cash reconciliations, ledger trial balances, memoranda, correspondence, and other documents forming the initial accounting data for entry in, or underlying records in support of, the records enumerated in paragraph (b)(1) of this section.

(4) Notwithstanding the provisions of paragraphs (b) (1) through (3) of this section, a micro-reproduction of any records may be substituted for the original and preserved for the required time in the required manner: *Provided, however,* That Licensee shall:

(i) Cause a duplicate micro-reproduction to be made on a current basis and stored separately from the original micro-reproduction for the time required;

(ii) At all times have available facilities for easily readable projection and the production of easily readable facsimile enlargements.

(c) *Reports to owners.* At the time any report (including any prospectus, letter, or other publication concerning the financial operations of the Licensee or any of its Portfolio Concerns) is furnished to investors, the Licensee shall file three copies with the Investment Division, SBA.

(d) *Documents filed with SEC.* Whenever a Licensee files any report, application or document with the Securities and Exchange Commission, it shall concurrently provide SBA with a copy thereof.

(e) *Filing of SBA Form 468.* Each Licensee shall submit to SBA, at the end of each fiscal year, a report containing financial statements for the fiscal year (Part I of SBA Form 468) as well as management information (Part II of SBA Form 468.) When requested by SBA, interim reports may be required, i.e., financial statements and/or management information. The reports are to be prepared in accordance with Appendix B, Guide for the Preparation of the Annual Report, SBA Form 468, which is equally applicable to interim reports, and shall be filed on the prescribed form, in triplicate, with the Investment Division, SBA, on or before the last day of the month immediately following the end of the reporting period (in the case of interim reports), and on or before the last day of the third month following the end of the reporting period (in the case of the Annual Report). These reporting requirements are approved under OMB No. 3245-0063. The financial statements contained in the Annual Report will be examined by the Licensee's independent public accountant in accordance with Appendix A, Audit Guide for Small Business Investment Companies. The 1940 and 1980 Act Companies should refer to the rules of the Securities and Exchange Commission for the reports to be filed with SEC.

(f) *Litigation reports.* When a Licensee becomes a party to litigation or other proceedings, including any action by the Licensee, or by a security holder thereof in a personal or derivative capacity, against an officer, director, Investment Adviser or other Associate of such Licensee for alleged breach of official duty, it shall within thirty days file a report with SBA describing the proceedings, identity of and Licensee's relationship to other parties involved and, upon request, submit copies of the pleadings and other documents specified by SBA. Where such proceedings have been terminated by settlement or final judgment, the Licensee shall promptly advise SBA of the terms thereof. This paragraph shall not apply to collection actions or proceedings in enforcement of Licensee's ordinary creditors' rights.

(g) *Other reports.* Each Licensee shall file with the Investment Division, SBA, such other reports as SBA shall require by written directive.

[48 FR 45017, Sept. 30, 1983; 49 FR 13865, Apr. 9, 1984]

§ 107.1003 Internal control.

(a) *General.* Each Licensee shall adopt a plan designed to safeguard its assets and monitor the reliability of its financial data, personnel, Portfolio, funds, and equipment.

(b) *Dual control, Bonding.* (1) Licensees shall maintain dual control over disbursements of funds and withdrawal of securities. Disbursements shall be made only by checks requiring two or more signatures or wire transfer authorized by two or more signatures. In the case of a Corporate Licensee, the signature of two or more officers shall be required. In the case of an Unincorporated Licensee, disbursements shall require the signature of two or more general partners, or two or more officers of a corporate general partner. Notwithstanding the foregoing requirement, checks in the amount of $1,000 or less may be signed by one officer of a Corporate Licensee or by one general partner of a Licensee. Two or more officers of a Corporate Licensee, or one officer and one employee shall be required to open safe deposit boxes or withdraw securities from safekeeping. Two or more general partners, or two or more officers, or one officer and one employee of a corporate general partner shall be required to open safe deposit boxes or withdraw securities from safekeeping: *Provided, however,* That an employee of the Licensee may be substituted for any of the persons described in this sentence. Licensees shall furnish to each depository bank and custodian a certified copy of its resolution or other formal act implementing the foregoing control procedures.

(2) In lieu of or in addition to the above, Licensees may maintain a Brokers Blanket Bond, Standard Form No. 14 or Finance Companies Blanket Bond, Standard Form 15, or such other form of coverage as SBA may approve, in a minimum amount of $25,000, executed by a surety holding a certificate of authority from the Secretary of Treasury pursuant to 6 U.S.C. Section 6-13. Each Person who has control over or access to cash, securities or other property of the Licensee shall be covered by such bond. The bond shall contain minimum coverage equivalent to insuring agreements (i) Fidelity, (ii) On premises and (iii) In transit provided in Finance Companies Blanket Bond Standard Forms 15 and 14. The bond shall also contain a rider or endorsement providing that the surety notify the SBA Investment Division of its intent to cancel the bond at least 30 days in advance of the effective date of cancellation.

§ 107.1004 Reporting changes not subject to SBA approval.

(a) *Changes to be reported.* Any change of Licensee's name, address, telephone number, officers, directors, or other participants in the management of a Licensee, articles, operating area, investment policy, or increase in capitalization not otherwise required to be reported (see, for example § 107.601) shall be reported to SBA not later than thirty days after these events. All changes shall be subject to SBA postapproval as a condition for the continuance of the license.

(b) *SBA approval.* Reports and requests filed pursuant hereto shall be deemed approved unless Licensee is notified to the contrary by SBA within ninety days after receipt thereof. Approval shall be contingent upon full disclosure of all relevant facts, subject to any conditions SBA may prescribe.

COMPLIANCE

§ 107.1101 Exemption from civil penalty.

Where it is impracticable to submit any required report within the prescribed time, the Licensee may, before such time has expired, promptly file an application which:

(a) Identifies such report;

(b) Certifies to an extraordinary occurrence not within the Licensee's control which makes timely submission of such report impracticable; and

(c) Is accompanied by written evidence.

SBA may thereupon exempt the Licensee from the civil penalty provision of section 315(a) of the Act, in such manner and upon such conditions as SBA determines.

EXEMPTIONS

§ 107.1201 Exemptions.

A Licensee may file an application in writing with SBA to have a proposed action, which is subject to any procedural or substantive requirement, restriction, or prohibition specified under this part, exempted from provisions thereof. SBA may approve such application and grant an exemption, conditionally or unconditionally, to the extent that such exemption from the requirement, restriction, or prohibition would not be contrary to the purposes of the Act. Such application must be accompanied by supporting evidence which demonstrates to SBA's satisfaction that:

(a) The proposed action is fair and equitable; and

(b) The exemption requested is reasonably calculated to advance the best interests of the SBIC program in a manner consonant with the policy objectives of the Act and regulations.

§ 107.1202 Savings clause.

The legality of transactions consummated pursuant to provisions of these regulations in effect at that time shall be governed thereby, notwithstanding subsequent changes. Nothing herein shall bar SBA enforcement action with respect to any transaction consummated in violation of provisions applicable at the time, but no longer in effect.

APPENDIX I—AUDIT GUIDE FOR SBICS AND PREPARATION OF THE ANNUAL REPORT

A NOTE OF CAUTION TO ALL SBICS LEGAL COUNSEL, ACCOUNTANTS AND TAX ADVISORS

The appendices refer to Securities and Exchange Commission Rules and Regulations, American Institute of Certified Public Accountants' publications, and the Internal Revenue Code in various places. The references are current at this time but can be changed at some future time. It is the responsibility of the licensee and its advisors to be knowledgeable of any change and its effect on the SBIC.

Distributions to stockholders or partners are permitted only to the extent that undistributed net realized earnings exist. Under certain circumstances this could create a hardship on stockholders in Subchapter S Licensees or partners in Limited Partnership Licensees.

The Financial Statements (SBA Form 468) must be typed. All books, records, and other supporting documents must be maintained in the English language.

Permission to file the Annual Report Form 468 on computer generated forms. SBA will consider each application to file the Annual Report Form 468 on a computer generated form, when accompanied by sample forms, on a case by case basis subject to the following conditions:

1. The computer generated forms must be identical to the SBA forms in all respects, including but not limited to;

a. size of paper,

b. print style, and

c. line by line contents of each page.

2. Prior approval must be obtained from SBA prior to the use of the computer generated forms.

3. Submission of computer generated forms without prior approval by SBA or change after approval will be rejected and will not be considered a "timely" filing.

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I. Introduction

A. Purpose of the Guide

The Small Business Administration (SBA) Audit Guide has been written primarily to (1) inform the licensee and (2) assist the auditors of Small Business Investment Companies (SBICs) in performing their financial examination by focusing on matters that are unique to the SBIC program and the venture capital industry. It should be noted that this Guide is not intended to be a substitute for the accountant's judgment as to the work required to meet generally accepted auditing standards.

The report (SBA Form 468) and related schedules have been designed to provide standard reporting in such form that will insure that uniform and comparable data will be received by SBA from all licensees. The licensee is responsible for the preparation of the report. The independent public accountant is required to audit the licensees' financial statements and express an opinion.

Further discussion of specific policies will be found in Appendix II.

B. Definitions

(1) "Licensee" means any corporation or limited partnership that has been licensed by the SBA as a Small Business Investment Company.

(2) "Directors" means any director of a corporation or any person performing similar functions with respect to any licensee whether incorporated or unincorporated.

(3) "Executive Officer" means the president, vice president, secretary or treasurer of the licensee or any other person who performs similar policy making functions for the licensee whether incorporated or unincorporated.

(4) "Advisory Board" means a board, whether elected or appointed, which is distinct from the board of directors or board of trustees, of the licensee, and which is composed solely of persons who do not serve such licensee in any other capacity, whether or not the functions of such board are such as to render its members "directors" within the definition of that term, which board has advisory functions as to investments but has no power to determine that any security or other investment shall be purchased or sold by such licensee.

(5) See § 107.3 for other "definition of terms."

II. Selection and Qualification of the Auditor

A. Selection of the Auditor

The responsibility for selecting the independent public accountant is vested in the licensee's Board of Directors/General Partner(s). Any accountant qualifying as an independent public accountant, as explained in Paragraph C may be considered as having SBA approval to perform the annual audit (financial examination) upon selection by the Board of Directors/General Partner(s), and the filing with SBA by such accountant of an executed IPA Certification, CO Form 112 (XX-XX) certifying as to his qualification and independence, unless advised otherwise by SBA.

It is strongly recommended that the Board of Directors/General Partner(s) give thorough consideration each year to the matter of selecting the public accountant to perform that year's audit. The Board/General Partner(s) under this policy selects an accountant with whom it agrees as to the scope of the engagement and basis of compensation. Notification of the Board's selection will be furnished to the Staff Accountant, Investment Division, Small Business Administration, 1441 L Street, NW., Washington, DC 20416. Notification to SBA is not necessary when the same accountant or accountants are retained for successive years.

B. Qualification of Accountants

Any public accountant, certified or licensed by a regulatory authority of a State or other political subdivision of the United States, who is independent and who is duly authorized to practice as a public accountant, and is in good standing under the laws of the State or other comparable authority in which so authorized, may be considered qualified to render an opinion as an independent public accountant on behalf of a licensee whose office is located in such State or Authority. Effective December 31, 1975, only a Certified Public Accountant may be considered qualified to render an opinion as an independent public accountant on behalf of a licensee except that those licensed public accountants who have received their licenses on or before December 31, 1971, will also be considered similarly qualified.

C. Independence

Accountants approved by SBA as auditors of a licensee are to follow the code of professional ethics adopted by the American Institute of Certified Public Accountants (AICPA). In determining whether an accountant may in fact be not independent with respect to a particular licensee, SBA will give appropriate consideration to all relevant circumstances, including evidence bearing on relationships between the accountant and such licensee or any affiliate thereof.

Accordingly, an accountant or a firm of which he is a partner or shareholder shall not express an opinion on financial statements of a licensee unless he and his firm are independent with respect to such licensee. Independence will be considered to be impaired if, for example:

1. During the period of his professional engagement, or at the time of expressing his opinion he or his firm,

a. Had or was committed to acquire any direct or indirect financial interest in the licensee; or

b. Had any joint closely held business investment with the licensee or any officer, director or principal stockholder, or partner, general or limited, thereof which was material in relation to his or his firm's net worth; or

c. Had any loan to or from the licensee or any officer, director or principal stockholder thereof.

2. During the period covered by the financial statements, during the period of the professional engagement or at the time of expressing an opinion, he or his firm,

a. Was connected with the licensee as a promoter, underwriter or voting trustee, a director or officer or in any capacity equivalent to that of a member of management or of an employee; or

b. Was a trustee of any trust or executor or administrator of any estate if such trust or estate had a direct or material indirect financial interest in the licensee; or was a trustee for any pension or profit-sharing trust of the licensee.

c. The independent accountant should familiarize himself with Section 600 "Matters Relating to Independent Accountants" of the "Codification of Financial Reporting Policies" of the Securities and Exchange Commission (SEC) which the SBA follows in most matters relating to the independence of accountants.

IPA CERTIFICATION

Staff Accountant, Investment Division,
Small Business Administration, 1441 L
Street, NW., Washington, DC 20416

Gentlemen:

I (we) have been selected by the Board of Directors of

____

(Name of Licensed Small Business Investment Company

____

License Number

____

(Address of Licensee's Principal Office)

to conduct an annual examination of the licensee's financial statements as of ———, 19——. In accordance with provisions of Paragraph II. B of Appendix I., (Check One):

☐ Independent[*] Certified Public Accountant (or firm of CPAs).

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[*] Independent within the meaning of this term as used by the Small Business Administration. SBA will not recognize any public accountant as independent who is not in fact independent. For example, an accountant will be considered not independent with respect to any small business investment company with which he has, or had during the period covered by the audit (financial

Continued

☐ Independent* Licensed Public Accountant (or firm of Licensed PAs).

I certify that this accountant (or firm of public accountants) is authorized to practice in, and is in good standing under the laws of, the state or other jurisdiction in which the principal office of the Licensee is located, and accordingly, qualifies to perform the annual audit of the above named Licensee.

(Date) ——————————————

(Signature of Individual Practitioner or Principal, if applicable) ——————

(Date) ——————————————

(Signature of Partner of Accounting Firm, if applicable) ——————————

(Type name under which individual practitioner or accounting firm is doing business) ——————————————

(Business Address) ——————————

(Zip Code) ——————————————

ACCOUNTANTS OPINION

To the Board of Directors and Shareholders of

or

To the General Partners and Limited Partners of

(Insert SBIC Name),

A Small Business Investment Company licensed by the SBA.

We have examined the statement of (Consolidated or combined, if applicable) financial condition of (Insert SBIC Name) including the portfolio of investments as of (insert date for close of fiscal period), and the related statement of operations for the year then ended, the statement of changes in financial position, and the supplementary schedules and information required by SBA Form 468. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. Securities owned at (insert date), except securities purchased but not received, were confirmed to us by the custodian (or "counted" if such was the audit procedure). As to securities purchased but not received, we requested confirmation from the (brokers/sellers as applicable), and where replies were not received, we carried out other appropriate auditing procedures.

The company presents its financial statements in conformity with accounting practices prescribed by the Small Business Administration, which provide for specific allocations of certain types of income to specific capital accounts. As discussed more fully in note (identify the note or notes) to the financial statements, securities amounting to $____ (____% of the net assets) have been valued at fair value as determined by the (board of directors/general partners, as applicable). We have reviewed the procedures applied by the (directors/partners) in valuing such securities and have inspected the underlying documentation; while in the circumstances the procedures appear to be reasonable and the documentation appropriate, determination involves subjective judgment which is not susceptible to substantiation by auditing procedures.

Our examination was made primarily for the purpose of formulating an opinion on the basic financial statements taken as a whole. The supplemental data contained in Schedules 1 through 6 is presented to conform with the requirements of preparing the Company's annual report to the Small Business Administration and, although not considered necessary for a fair presentation of the basic financial statements, such information has been subjected to the audit procedures applied in the examination of the basic financial statements. In our opinion, Schedules 1 through 6 are fairly stated in all material respects in relation to the basic financial statements taken as a whole.

In our opinion, subject to the possible effect on the financial statements of the valuation of securities determined by the (board of directors/general partners) as described in the preceding paragraph, the aforementioned financial statements present fairly the net assets of (Insert SBIC Name) at (insert date), and the results of its operations, change in financial position, and supplementary information for the year then ended, in conformity with generally accepted accounting principles, applied in a manner consistent with that of the preceding year.

We consent to the use of this opinion in connection with the filing of the report of (Insert SBIC Name) with the Small Business Administration on SBA Form 468.

(Signed) Independent Auditor
(Insert City and State)
(Insert Date)

NOTE: The accountant will comment on any other exceptions in Paragraph 2 prior to the comments on valuation.

III. Scope of Audit

The independent public accountant's audit is to be an examination of the licensee's financial statements in accordance with generally accepted auditing standards as expressed by the American Institute of Certified Public Accountants. The auditor is to

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examination), any direct financial interest or any material indirect financial interest; or with which he is, or was during such period, connected as a promoter, underwriter, voting trustee, investment adviser, director, officer, or employee.

make an examination of the licensee's financial statements with the view of expressing an opinion as to whether the financial statements present fairly the financial position, changes in financial position, and results of operations in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Management is responsible for the preparation of the Annual Report, SBA Form 468. The statements and supporting schedules will be the basis for the auditor's opinion. It is expected that all audit adjustments will be recorded in the licensee's records before completion of the audit report so that financial statements accompanying the report will agree with the books as adjusted as of the statement date, giving consideration to reclassifications of account balances for report purposes. If the adjustments are not so recorded on the licensee's books, a statement should be made by the independent accountant to this effect.

The independent public accountant is expected to satisfy himself as to the reasonableness of the basis used by the licensee's Board of Directors/General Partner(s) in determining the valuation of loans and investments. Accordingly, the auditor should comment in his report as to reasonableness of procedures used and adequacy of documentation.

IV. Accounting Policies and Practices

A. General

As a general rule, accounting policies followed by licensees are those expressed by the American Institute of CPA's as generally accepted accounting principles and practices. Certain of these principles and practices are prescribed in the AICPA's Audit Guide. The System of Accounts Classification (Appendix II) in item II identifies particular accounting policies and practices licensees are required to follow.

B. Reporting Entity

The auditor should bear in mind that the reporting entity being audited is the licensee. Those securities and assets that are held for investment are to be reported on the fair value basis.

A corporate licensee may hold an investment in a 301(d) licensee and/or have a wholly owned management consulting subsidiary. A limited partnership licensee may hold an investment in a 301(d) licensee and/or own 100 percent of outstanding stock of a management consulting company. Such securities would not be considered held for investment but are considered held for long-term operating purposes.

1. ***Equity Method of Accounting for Investments in Common Stock or Limited Partnership Interests.***—"Equity" method of accounting for investments in common stock or Limited Partnership Interests is not to be confused with the "fair value" method of reporting portfolio securities. Under the equity method, an investor initially records such an investment at cost, and adjusts the carrying amount of the investment to recognize the investor's share of the earnings or losses of the investee after the date of acquisition. The amount of the adjustment is included in the determination of net income by the investor. Dividends or distributions received from an investee reduce the carrying amount of the investment. Accounting Principles Board Opinion No. 18 issued in March 1971, by the AICPA specifically does not apply to licensees whether or not registered under the Investment Company Act of 1940, as explained in Paragraph 2 of that Opinion.

The AICPA Audit Guide states that investments in other than portfolio securities which meet the criteria of APB Opinion No. 18 should be carried on the equity basis. As applied to licensees, this would only apply to investments in section 301(d) licensees, investments in unincorporated entities and/or management consulting investments. In those cases where a 301(d) licensee is a subsidiary of another licensee, such subsidiary should be reported as an unconsolidated subsidiary by the corporate parent licensee.

2. *Policy on Consolidated Financial Statements.*—Consolidated Financial Statements are to be filed with SBA only where the corporate licensee has a management consulting subsidiary. Combined Financial Statements are to be filed with SBA only where the limited partnership licensee has an investment in a management company. Under SBA Regulations, management consulting companies are to be a wholly owned and are to be consolidated or combined with the licensee.

Under certain circumstances, a licensee may temporarily own more than a 50 percent equity position in a financed concern. Such investments are to be reported on the fair value basis and classified as loans and investments rather than being reported on a consolidated basis with the licensee.

V. Reporting Requirements—General

A. Annual Financial Report

The Small Business Administration, under authority granted by the Small Business Investment Act of 1958, as amended, (1958 Act) requires licensees to have their financial statements examined annually by independent public accountants approved by SBA. The annual audit shall be performed as of the close of the licensee's fiscal year.

Three copies of the accountant's report including the Financial Report prepared on forms constituting SBA Form 468 and supporting schedules, shall be submitted to SBA by the licensee as soon as practicable after completion and no later than the last day of the third month following the close of the period covered by the audit. Attached to the inside of the back cover of each copy of the audit report should be a copy of any transmittal letter, special reports, or similar communications furnished to the licensee by the auditor.

B. Reporting Irregularities

The independent public accountant shall promptly inform a responsible official of the licensee and the Deputy Associate Administrator for Investment, Investment Division, Small Business Administration, 1441 L Street NW., Washington, DC 20416, concerning any apparent defalcation that may come to his attention in connection with his examination. Based on available information, he will indicate the nature and the extent of such defalcation(s). In regard to the other financial or regulatory irregularities that may come to his attention in connection with his examination, the independent public accountant shall promptly inform the licensee in writing of his findings. The licensee shall, within 30 days, inform the SBA of the findings of the independent accountant and enclose a copy of the report to the SBA. The independent accountant shall, not later than 60 days after the date of his report to the licensee concerning the irregularities request confirmation from the SBA that the SBA has received a copy of his report to the licensee dated (insert date).

C. Regulated Investment Companies

Concerning licensees that are registered with the Securities and Exchange Commission, additional reports are required by SEC which are identified in Chapter 1 of the AICPA's Audit Guide. It should be noted that any report submitted by a licensee to the SEC shall also be submitted to the Investment Division, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

D. Special Management Reports

Frequently, the independent public accountant or an outside consultant will render special reports to the licensee's management concerning the financial condition or other matters on the portfolio investments of the licensee. All such reports will be maintained in the licensee's files pursuant to the record retention requirements of Section 1002 of Part 107 of SBA regulations and will be available to SBA as needed. In his respect, tax returns will be retained in he files and made available to SBA as reuired.

Upon request, licensees will submit to SBA either, the complete SBA form 468 or a part thereof. Such reports are considered interim in that they cover less than a full year of operations and the financial report is not audited by the licensee's independent accountant. Accordingly, such reports are in addition to, not in lieu of, the annual report.

E. Investment Objectives & Policies

The composition of a licensee's loans and investments varies from one licensee to another and reflects the licensee's policies and objectives of investing that are being followed in practice. Such objectives may emphasize equity investments, loans or a balance between loan and equity investments. The portfolio may also be widely diversified or specialized as to industry or geographic area. In addition, the licensee may choose to be "301(d) licensee" that is organized to be a profit or non-profit corporation with an investment policy limited to providing financing solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages. Such licensees were formerly designated by the acronym "MESBIC."

The basic investment objectives adopted by management can be found in the licensee's proposal to operate, as amended.

F. Federal Income Tax Provisions Affecting Investment Accounts

Licensees which elect to qualify as Regulated Investment Companies under Subchapter M of the Internal Revenue Code must meet the various requirements set forth therein which are summarized in Chapter 5 of the AICPA's Audit Guide. Also Item VI. B. of this Guide summarizes the special income tax provisions that may apply to licensees.

G. Recordkeeping Requirements Relating to Investment Activity

No specific recordkeeping system for investment activity is required other than that provided in the SBA's System of Account Classification. However, the licensee is to develop systems and maintain records sufficient to properly account for transactions and valuation of individual loans and investments.

Section 107.1002 of the SBA Rules and Regulations specifies the records and documents which must be maintained and preserved by all licensees. In addition, licensees registered under the Investment Company Act of 1940 are required to maintain and preserve those records specified in such Act and the Rules and Regulations thereunder.

H. Custody of Securities

A licensee's management is expected to assume responsibility for the custody of securities. Accordingly, there is to be safekeeping for securities, usually a safe deposit box at a bank of other custodian with such safekeeping facilities, and control over withdrawal of securities from safekeeping is required as specified in § 107.1003 of the SBA Regulations.

I. Valuation of Securities

The general practice in the investment company industry is to disclose, in one form or another, valuation of securities at quoted market values or, in the absence of quoted values, at fair values determined by the company's Board of Directors of General Partner(s) in good faith.

Ordinarily, little difficulty should be experienced in valuing securities traded on a recognized securities exchange since the prices of transactions are published daily. If a security was traded on the valuation date, the last quoted sales price generally is used. However, if there were no sales on the exchange on the valuation date but published closing bid and asked prices are available, the valuation should be within the range of these quoted prices. Where quotations appear questionable, consideration should be given to valuing the securities at fair value as determined in good faith by the Board of Directors or General Partner(s).

Quotations are available from various sources for most unlisted securities traded regularly in the over-the-counter market. Ordinarily, quotations for an over-the-counter security should be obtained from more than one broker/dealer unless available from an established market-maker for that security. Quotations for several days should be used and the valuation should be within the range of these quotations.

The Board of Directors or General Partner(s) when valuing securities must consider the effect of factors having a bearing on the value of such securities even when they are traded on a recognized exchange where market quotations are available. Examples of such factors are a thin market, large holdings by the licensee that would adversely affect the market price if traded, or securities that are restricted.

Regarding securities that are not publicly traded, it is incumbent upon the Board of Directors or General Partner(s) to satisfy themselves that all appropriate factors relevant to the value of securities for which market quotations are not readily available have been considered and to determine the method of arriving at the fair value of each security.

To the extent considered necessary, the Board of Directors or General Partner(s) may appoint persons to assist it in the determination of such value. However, the Board of Directors or General Partner(s) must review continuously the appropriateness of the method used in valuing each loan and investment in the licensee's portfolio.

It should be noted that the investments of licensees usually are venture-type investments that complicate the determination of value. The investee, in such cases, is usually a closely held, immature Small Business Concern whose stock is not publicly traded. In addition, there may be weaknesses in the Concern's management. For these and other reasons, cost may be the most appropriate measure of value of venture-type securities until sufficient evidential matter is available to the licensee's Board of Directors or General Partner(s) to form a basis for valuing the securities at other than cost.

As stated in Accounting Series Release No. 118 of SEC, (404.03 Codification of Financial Reporting Policies) no single standard for determining fair value in good faith can be laid down, since fair value depends upon the circumstances of each individual case. SBA has set forth guidelines in SBA Policy and Procedural Release No. 2006 to assist the directors of licensees in valuing their securities. The auditor should satisfy himself that the valuation guidelines issued by SBA, or other reasonable methods, are used in valuing securities.

Additional guidance for the valuation of securities is given in Chapter 3 of the AICPA Audit Guide and in Accounting Series Releases 113 (404.04 Codification of Financial Reporting Policies) and 118 issued by the SEC.

J. Audit Procedures

The auditing procedures relating to the investment accounts of investment companies require greater attention than those of a commercial enterprise because of the relative significance of such assets. In either case, the independent auditor should evaluate the internal accounting controls as a basis for determining the extent of his examination. The auditing procedures outlined in the AICPA's Audit Guide should be followed to the extent appropriate. Concerning valuation of securities:

THE LICENSEE'S BOARD OF DIRECTORS OR GENERAL PARTNER(S) HAS (HAVE) THE SOLE RESPONSIBILITY FOR VALUING SECURITIES IN GOOD FAITH

The auditor is not to be an appraiser in the sense that he is to determine the value of the licensee's securities. He is, however, expected to review the methods and evidential matter used by the Board of Directors or General Partner(s) in their determinations of fair value. He is further expected to comment in his report on the reasonableness of such practices and adequacy of such information.

K. 3 Percent Cumulative Preferred Stock

As part of the leverage funds provided to a 301(d) licensee, SBA may purchase 3 percent cumulative preferred stock, which while considered to be part of equity, is not considered paid-in capital or paid-in surplus for leverage or regulatory purposes.

The rights of the preferred stockholder (SBA) are set forth in § 107.203 of the SBA Regulations.

L. Unrealized Gain (Loss) on Securities Held

Unrealized Gain (Loss) on Securities Held represents the estimated net gain (loss) after tax effect, if any, that the licensee would realize if the loans and investments were sold at the statement date, but as if in the normal course of business.

The auditor should recognize that Unrealized Gain (Loss) on Securities Held results from valuation of Loans and Investments by the licensee's Board of Directors. Such valuation usually is a judgmental estimate which involves uncertainties that are difficult to quantify. Accordingly, the reliability of the unrealized gain (loss) on securities held will not be as great as realized gain (loss) on sale of securities because the latter is based on transactions that are objectively measurable.

1. *Unrealized Appreciation on Securities Held.* This is the amount by which fair value of the licensee's loans and investments exceeds cost.

2. *Unrealized Depreciation of Securities Held.* This is the amount by which fair value of the licensee's loans and investments is less than cost. Included in unrealized depreciation are items such as allowances for losses, temporary declines, and mortgage discounts.

3. *Estimated Income Taxes.*

a. Corporate Licenses—This is a provision for taxes on the net amount of unrealized appreciation and the offset being a deferred credit or deferred charge.

b. Limited Partnership Licensees—No provision for estimated income taxes is necessary since partnerships do not pay income taxes.

M. Undistributed Realized Earnings

Undistributed Realized Earnings is the cumulative balance of periodic net investment income including realized gain (loss) on securities sold.

1. Corporate Licensees—less dividend distributions whether cash, stock or dividends in kind. Included are non-cash gains on securities sold, i.e. notes, securities or other assets received.

2. Limited Partnership Licensee—less distributions to partners, general or limited, whether cash or property in kind. Included are non-cash gains on securities sold, i.e. notes, securities or other assets received.

Such non-cash gains will not be available for capitalization or distribution until such assets are converted to cash. Accordingly, undistributed realized earnings will be reflected in two capital accounts: (1) Non-Cash Gains/Income and (2) Undistributed Net Realized Earnings.

3. Non-cash income from the following sources is to be reported as non-cash income, and in certain cases may be reported on the equity method:

(a) Corporate Licensee from a
(i) parent and/or
(ii) subsidiary
(b) Partnership Licensee from
(i) partner (general or limited) and/or
(ii) wholly owned investment or management company which results in an unpaid receivable.

VI. OTHER MATTERS

The independent auditor should satisfy himself that investment company accounts not specifically mentioned in this audit guide or the AICPA Audit Guide are maintained in accordance with generally accepted accounting principles and audited in accordance with generally accepted auditing standards for other commercial enterprises.

A. Compensating Balances

In those instances where idle funds are encumbered or are being used as "compensating balances", the nature and extent of such encumbrance will be disclosed in a note to the financial statements.

If the compensating balance is a formal arrangement, the funds should be reclassified to either other current assets or other assets, whichever would be appropriate.

B. Taxes

Licensees receive special tax treatment in a number of areas. The effect is to allow certain exclusions or additional deductions without the limitations prescribed for other corporations.

A corporate licensee operating under the 1958 Act is allowed a 100 percent dividends received deduction for dividends received by it from a taxable domestic corporation. To claim this 100 percent deduction the licensee must file with its return a statement that it was a Federal licensee under the 1958 Act at the time of the receipt of the dividends.

An ordinary loss, rather than a capital loss, shall be taken on the sale or exchange of convertible debentures or stock acquired pursuant to the conversion privilege of such debentures. Capital losses on other investments receive no special treatment. A licensee must submit with its tax return a statement that it is a Federal licensee under the 1958 Act setting forth the name and address of the small business concern with respect to whose securities the loss was sustained, the number of shares of stock or the number or denomination of bonds, the basis and selling price, and the respective dates of purchase and sale or the reason for their worthlessness and the approximate date thereof.

Special provisions are provided for reserves for losses on loans of licensees, and they may obtain special treatment for net operating losses and may be excluded from the definition of a personal holding company. The independent auditor should assure himself that he is familiar with the most recent changes in the IR Code concerning net operating losses or other matters affecting the licensee.

A shareholder in a licensee may treat a loss on stock as an ordinary loss and in the case of a noncorporate shareholder such loss is considered a loss from a trade or business.

Finally, there is no excess accumulated earnings tax assessed to a licensee provided it utilizes such earnings and profits for additional loans and investments.

Congress has recently changed the rules on Subchapter S Corporations. Licensees should seek knowledgeable tax counsel prior to any decision.

C. Notes and Debentures Payable to or Guaranteed by SBA

A primary advantage of the SBIC program is the ability of licensees to acquire long-term leverage funds from SBA. Usually the terms and conditions set forth in § 107.203(b) of SBA Rules and Regulations are incorporated in the debenture as covenants to the agreement.

Section 107.203(b)(1)(iii) provides that the entire indebtedness of the licensee may be declared immediately due and payable for:

". . . Failure of the licensee, as determined by SBA, to comply with any one or more of the provisions of the Act or Regulations promulgated thereunder, as they may be amended from time to time . . ."

Demand in such cases will be made in a letter from SBA specifying the violations that have occurred and that funds owed the SBA are due and payable in accordance with the acceleration provisions of the debentures. The violations which cause demand to be made are usually those which are significant and include such areas as conflicts of interest, control of small business concerns by the licensee, overline investments and any other such major acts which might be determined by SBA to be contrary to the Act and Regulations. It should be noted that in such cases demand is viewed as a means to protect the SBA's position as a creditor usually after other efforts have been unsuccessful.

In those instances where the licensee fails to maintain either the capital requirement or the investment ratio (See section 303(b)(2) of the Act or §§ 107.203(b)(6) and 107.203(d) of the Regulations) SBA may, in its discretion, upon written notice consider part or all of the licensee's long-term debt to be due and payable. Written notice is not required, however, for the long-term debt to be considered due and payable when any of the four conditions set forth in § 107.203(b)(2) exist.

Should the auditor have difficulty in determining whether demand has been or is about to be made on such long-term indebtedness, he may consider requesting a positive confirmation from the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416, as to whether the licensee is in violation of the Act or regulations as of the statement date and as a result whether demand is being made by SBA on the long-term debt.

D. Licensees Regulated under the Investment Company Act of 1940

Licensees that are regulated by SEC under the Investment Company Act of 1940, shall also comply with the Fidelity Bond requirements set forth in § 270.17g-1 of the SEC Rules and Regulations. Therefore, SBICs that are regulated by SEC under the 1940 Act are to comply with such requirements.

VII. REPORTING REQUIREMENTS—SPECIFICS

A. General

The financial statements of Licensees are directed to the presentation of financial position, changes in financial position, results of operations and supporting schedules. Such statements and schedules constitute the Financial Report, SBA Form 468, and are required to be presented in the prescribed format.

The financial statements required for Licensees differ in certain respects from those suggested in the AICPA's Audit Guide. Such deviations are not at variance with generally accepted accounting principles and reporting practices. The opening paragraphs of Chapter 7 of the AICPA's Guide support this view:

"The financial statements illustrated in this chapter are for typical open-end management investment companies and may need to be modified to fit the requirements of other types of investment companies."

"In all instances, the management of investment companies and the auditor should be cognizant of the need for reporting in a manner which properly highlights significant information for shareholders and other interested parties. Content and format of reports required by regulatory authorities, e.g., the Securities and Exchange Commission and Small Business Administration, are, of course, governed by the requirements of the applicable form and related rules, regulations, and instructions."

The Financial Report (SBA Form 468) with supporting schedules, is designed to present the licensee's financial statements as audited by the independent public accountant. Accordingly, the statements are based on the transactions recorded in the accounts.

The Financial Report contains standard statements and schedules. Therefore, when a particular statement or schedule does not apply to the licensee's operations, it should be omitted. For example, if the licensee did not sell securities during the period, the Statement of Realized Gain (Loss) on Sale of Securities would be omitted. The Financial Report, therefore, should be "tailored" to fit the licensee's given situation.

Such tailoring, however, does not include deviating from accounting and reporting practices prescribed in these appendices.

B. Financial Report Heading

Set forth in the approprate spaces the information called for representing the identification and the principal office address of the licensee. As to the employer identification number, enter the number assigned to the licensee by the U.S. Treasury Department. If such number has not yet been assigned, an Application for Employer Identification Number, Form SS-4, shall be submitted to the U.S. Director of Internal Revenue for the area in which the licensee's principal office is located.

The preparer of this report should keep in mind that amounts are to be rounded to the nearest dollar.

The following is a detailed discussion as to how the statements are prepared.

[OMB Control No.: 3245-0063]

COVER SHEET

Give Name of Licensee, City, State and License Number on the designated lines. Show Fiscal Year End in the space provided. Immediately below the appropriate lettered box, enter the number that describes the proper classification shown in Tables A through D.

Name of Licensee: ______________________

City and State: ______________________

____

County

____

Zip Code

____

Employer ID Number

(SIC Code, 4 digit)______________________

Licensee Number: ______________________

ANNUAL REPORT

____

For Fiscal Year Ended———, 19——

SBA Form 468

SIZE AND CLASSIFICATION

A B C D

Size—In total Assets—A:
- 1 Zero to $1 million
- 2 $1 million to $2 million
- 3 $2 million—$5 million
- 4 $5 million—$10 million
- 5 over $10 million

Ownership—B:

Bank-Owned:
- 1 Bank Dominated (50% or more owned by Bank or Bank Holding Company)
- 2 Bank Associated (10% to 49% owned by Bank or Bank Holding Company)

Owned by Financial Corporation (Other Than Bank or Bank Holding Company):
- 3 Publicly Owned
- 4 Privately Owned

Owned by Non-Financial Corporation:
- 5 Publicly Owned
- 6 Privately Owned

Owned by Individuals:
- 7 Publicly Owned
- 8 Privately Owned

Investment Policy—C:
- 1 Diversified
- 2 Non-diversified

Venture Capital Status—D:
- 1 Venture Capital Qualified
- 2 Not Venture Capital

C. Statement of Financial Position

This statement is designed to measure the licensee's financial position as of the statement date in a conventional balance sheet format. Because of their significance, loans and investments are presented before current or other assets. Likewise, long-term debt is shown before current or other liabilities.

1. Assets—Are grouped according to Loans and Investments, Investment in 301(d) Licensee, Current Assets and Other Assets.

a. *Loans & Investments as grouped into four categories:*

(1) *Portfolio Securities*—Are those securities of small business concerns obtained through providing financing.

(2) *Assets Acquired in Liquidation of Portfolio Securities*—Are those securities or other assets the licensee has acquired by taking action to protect its investment. Such assets are grouped according to receivables from debtors, and other assets acquired.

(3) *Operating Concerns Acquired*—Represents the total investment in portfolio concerns where action was necessary to protect the licensee's investment. This will include only operating concerns over which the licensee has acquired control or has the power to control either individually or in concert with other licensees.

(4) *Other Securities*—Are those securities the licensee holds that did not result from providing financing to small business concerns. Other securities will result when portfolio securities or assets acquired are sold and part of the net sales price is notes, or other securities. Also, dividends in kind from portfolio concerns would be classified as other securities.

Loans and investments are shown at cost and through adjustments for unrealized appreciation and unrealized depreciation arrive at their value.

b. *Investment in 301(d) Licensee*—Is a unique investment in that the nature and purpose of the investee is similar to that of the investors. Also, the investor actively participates in the management of the investee. For those and other reasons, investments in 301(d) licensees are not classified as Loans and Investments but are shown as a separate asset group on the Statement of Financial Position. Such investments will be carried on the equity method of accounting.

c. *Current Assets*—Are those assets that are cash, expected to be converted to cash or are expected to be expensed in the next operating business cycle: i.e., one year from the statement date. While current assets are not grouped as such for other investment companies, regulatory purposes require such a grouping for SBICs.

d. *Other Assets*—Are those assets that are not otherwise explained above. Included are furniture and equipment, deferred charges, funds in escrow and other items.

e. *Memorandum Assets*—Are worthless investments, each of which has been written off. The licensee will disclose in a footnote to the financial statements on the disposal of any security in this category.

2. *Liabilities*—Are classified according to long-term debt, current liabilities and other liabilities.

a. *Long-Term Debt*—Includes debt of the licensee net of current maturities. Such debt is grouped according to that which is payable to or guaranteed by SBA and that which is payable to others.

b. *Current Liabilities*—Are those liabilities requiring the payment of cash during the next business cycle; i.e., 12 months from the statement date. Included are accounts payable, accrued interest and taxes payable, current maturities on long-term debt, dividends payable, distributions payable to partners and other current items.

Other Liabilities—Are those liabilities not otherwise classified and include trust receipts, deferred credits and other items.

3. *Corporate Capital Accounts*—Are grouped according to paid-in capital and surplus, 3 percent preferred stock sold to SBA, unrealized gain (loss) on securities held and undistributed realized earnings..

a. *Capital Stock and Paid-In-Surplus*—Represents the licensee's capital which is the first component used to compute the licensee's regulatory capital for leverage and overline purposes.

b. *3% Preferred Stock Issued to SBA*—While such preferred stock by the nature of the instrument is equity, it is not considered paid-in capital and paid-in surplus; rather it is a part of the leverage funds obtained by a 301(d) licensee from SBA.

c. *Unrealized Gain (Loss) on Securities Held*—Is the net unrealized appreciation on securities held after an allowance for taxes as of the statement date. This is the amount in column 2 line 13, on the Statement of Unrealized Gain (Loss) on Securities Held if a corporation or the amount of column 2 line 11 of a partnership.

d. *Undistributed Realized Earnings*—Represents the cumulative balance of periodic net investment income and realized gain (loss) on securities sold, less dividend or distributions. Undistributed realized earnings are composed of:

(1) *Non-Cash Gains/Income*—Which represent notes, securities or other assets received as part of the net sale price when securities are sold and non-cash income from investments reported on the equity method of accounting.

(2) *Undistributed Net Earnings Realized*—Which represents undistributed earnings realized net of (a) non-cash gains on sale of securities (b) non-cash income from investments reported on the Equity Method of Accounting.

4. *Retained Earnings Computation*—In note form above the Statement of Undistributed Realized Earnings is designed to set forth "retained earnings" on the same basis and in the same manner as it was viewed on the cost basis. Such Retained Earnings will be the basis for dividend declaration (whether cash or stock) or the basis for capitalizing earnings by corporate resolution.

"Retained Earnings" is Undistributed Net Realized Earnings reduced by allowances for losses that have been established on Loans and Investments. The allowance for loss should not be less than the net amount by which the unrealized depreciation exceeds the unrealized appreciation.

Treasury Stock is a restriction on the amount of Retained Earnings available for distribution.

5. *Partnership Capital Accounts*—Are grouped according to Partner's Permanent Capital Contribution (paid-in cash and capitalized retained earnings), Unrealized Gain (Loss) on securities held, non-cash gain on sale of securities and undistributed net-realized earnings.

a. *Partners Permanent Capital Contribution*—Represents cash paid in to acquire a partnership interest plus any undistributed net realized earnings transferred to partner's permanent capital contribution which is the basis for leverage and other regulatory purposes.

b. *Unrealized Gain (Loss) on Securities Held*—Is the net unrealized appreciation on securities held as of the statement date. This is the amount in column 2, line 11, on the Statement of Unrealized Gain (Loss) on Securities Held.

c. *Non-Cash Gains/Income*—Which represent notes, securities or other assets received as part of the net sale price when securities are sold, and non-cash income from investments reported on the equity method of accounting.

d. *Undistributed Net Realized Earnings (Earned Capital)*—Represents the cumulative balance of periodic net investment income and realized gain (loss) on securities sold less partnership distributions.

6. *Partners Earned Capital Computation*—In note form above the statement of undistributed realized earnings is designed to set forth "retained earnings" on the same basis and in the same manner as it was viewed on the cost basis. Such "Earned Capital" will be the basis for partnership distributions (whether cash or in kind) or the basis for capitalizing earnings by agreement of the partners in accordance with the partnership agreement.

"Retained Earnings" is Undistributed Net Realized Earnings reduced by allowances for losses that have been established on Loans and Investments.

GENERAL DISCUSSION OF PARTNERSHIP CAPITAL ACCOUNTS REGULATORY PROBLEMS

Regulations governing SBICs create very special and unique requirements for the accounting of Partners' Capital Accounts. Normal partnership accounting requires only one capital account for each partner. Depending on the partnership agreement there may be additional accounts for partner's salaries, interest on partners' capital invested, and/or partners' drawing accounts. At the end of the fiscal year all of the partner's other accounts are closed to the partner's capital account in addition to the partners' share of the results of operations for the year.

Some limited partnership agreements divide the partnership capital between (1) Partnership Permanent Capital, and (2) Partnership Earned Capital.

SBICs, who have adopted the limited partnership form of organization, must, because of regulatory requirements, keep the partners' capital accounts divided into four sub-sections. Each subsection and the legal reason requiring the subsection will be discussed separately. The four subsections are (1) Partner's Permanent Capital Contribution, (2) Partner's Unrealized Gain on Securities Held, (3) Partners Non-cash Gain/Income (restricted capital) and (4) Partners Undistributed Net Realized Earnings (Earned Capital). The sum of these four accounts is the equivalent of the partnership capital account of a non-SBIC partnership. The SBIC must also keep the general partners and limited partners shares of each of the four capital accounts separate which creates eight capital accounts as control accounts. The SBIC will, either by subsidiary or memorandum accounts, keep a record for each partner, general or limited.

PARTNERS' PERMANENT CAPITAL CONTRIBUTION

The balances shown in these accounts are the amount of cash contributed by each partner to the partnership less any reductions to permanent capital. Any reductions of permanent capital in excess of two percent in any fiscal year must receive prior approval from SBA. These balances after the adjustments required by regulation then constitute "Regulatory Capital" for first, the amount of capital that will be leveraged by SBA and second, the amount of capital that determines the legal maximum amount of any investment in a small business concern without requiring SBA approval for an "Overline". Partners' Permanent Capital Contribution performs the same function for the partnership as "Capital Stock" and "Capital Surplus Contributed in Excess of Par Value" perform in a corporation.

PARTNERS' NET REALIZED GAINS AND PARTNERS' NON-CASH GAINS/INCOME

A limited partnership which was not subject to the legal requirements of an SBIC would have a single account titled "Earned Capital". Distributions to either general or limited partners would be charged to this account. SBA rules and regulations, however, permit distributions to be made only from gains realized in cash or cash income from investments reported on the equity method of accounting. "Earned Capital" is therefore divided into two accounts;

1. Partners' Net Realized Gain and,
2. Partners' Non-cash Gains/Income.

Distributions may only be made to partners to the extent that Partners' Net Realized Gains has a credit balance.

PARTNERS' UNREALIZED GAINS ON SECURITIES HELD

Investment companies report on the value basis rather than on the cost basis for their investments. This account has many of the characteristics of either appraisal surplus for a corporation or recognized goodwill on the admission of a new partner in a non-investment partnership. Normal practice, in a non-investment partnership, for the admission of a new partner by investment in the partnership or the withdrawal of a partner from the partnership requires agreement by all parties on the current market value of the assets to determine the proper price to be paid by a new partner for admission or to the partner who is withdrawing.

....	....
License No.	Name of Licensee
Statement of Financial Position as of.	....
	(Amounts rounded to nearest dollar)

Assets, loans and investments	Cost	Valuation		Value
		Unrealized depreciation	Unrealized appreciation	
Portfolio Securities:				
1. Loans				
2. Debt Securities				
3. Equity Interests				
4. Total				
Assets Acquired in Liquidation of Portfolio Securities:				
5. Receivables From Debtors on Sale of Assets Acquired.				
6. Assets Acquired				
7. Total				
8. Operating Concerns Acquired				
9. Notes and Other Securities Received				
10. Total Loans and Investments				
11. Less Current Maturities				
12. Loans and Investments Net of Current Maturities.				
Investment in 301(d) Licensee (Note 1):				
13. Name				
License No.				
Current Assests:				
14. Cash				
15. Invested Idle Funds				
16. Interest and Dividends Receivable				
17. Notes, Accounts Receivable and Receivables from Parent.				
18. Less: Allowance for Losses				
19. Current Maturities of Portfolio Securities				
20. Current Maturities of Assets Acquired				
21. Current Maturities of Operating Concerns Acquired.				
22. Current Maturities on Other Securities				
23. Other Current Assets				
Other Assets:				
24. a. Funiture & Equipment				
b. Less: Accumulated Depreciation				
25. Other				
26. Total Assets				

Assets, loans and investments	Cost	Valuation		Value
		Unrealized depreciation	Unrealized appreciation	
(Note 1) Note to Item 13 should include percent owned, cost basis and changes resulting from equity method of accounting. (Note 2) Column Heading apply to itemss through 12 only. (Cost - Unrealized Depreciation + Unrealized Appreciation = Value) (Note 3) *Memorandum Assets*—are worthless investments, each of which has been written off. The Licensee will disclose in a footnote to the financial statements on the disposal of any security in this category.				

Description by Line Item—The following is a description by line item as to how the amounts shown on this statement are developed.

Item 1, Loans—In column 1, show the balance of account 170 less the balance of account 173. In column 2, show the balance of account 172. In column 3, show the balance of account 171.

Item 2, Debt Securities—In column 1, show the aggregate of balances in accounts 180 and 184 less account 188. In column 2, show the balance of account 187. In column 3, show the balance of account 186.

Item 3, Equity Interests—In column 1, show the aggregate of balances in accounts 190, 191, 194 and 197. In column 2, show the aggregate of balances in account 193, 196, and 199. In column 3, show the aggregate of balances in account 192, 195, and 198.

Item 4, Total—Show the total of Items 1, 2, and 3 which represents the total of portfolio securities.

Item 5, Receivables from Debtors on Sale of Assets Acquired—Show in column 1 the balance of account 200 and in column 2 the balance of account 203.

Item 6, Assets Acquired—In column 1, show the balance in account 204. In column 2, show the balance in account 206 and in column 3, show the balance of account 205.

Item 7, Total—State the aggregate of Items 5 and 6 which represents the total of assets acquired in liquidation to portfolio securities.

Item 8, Operating Concerns Acquired—Show in column 1 the balance of account 210, in column 2 the balance of account 212 nd in column 3 the balance of account 211.

Item 9, Notes and Other Securities Re-eived—Show in column 1 the aggregate of alances in accounts 220 and 221. In column , show the balance in account 223 and in olumn 3 show the balance of account 222.

Item 10, Total Loans and Investments—tate the aggregate of Items 4, 7, 8, and 9 hich represents the total of loans and in-estments.

Item 11, Less Current Maturities—Show the aggregate of balances in accounts 150 thru 154.

Item 12, Loans and Investments Net of Current Maturities—Show the amount stated in Item 10, column 4 less the amount shown in Item 11.

Item 13, Investment in 301(d) Licensee—When a licensee has an investment in a 301(d) licensee, the name and license number of the investee should be shown in the space provided. The balance shown in account 160 should be shown.

Item 14, Cash—Show the aggregate of accounts 100 through 120.

Item 15, Invested Idle Funds—Show the aggregate of accounts 130 through 138.

Item 16, Interest and Dividends Receivable—Show the aggregate of balances in accounts 143 and 145.

Item 17, Notes, Accounts Receivables, and Receivables from Parent—Show the aggregate of balances in accounts 140, 141 and 146.

Item 18, Less: Allowance for Losses—Show the aggregate of balances in accounts 142 and 144.

Item 19, Current Maturities of Portfolio Securities—Show the balance of account 150.

Item 20, Current Maturities of Operating Concerns Acquired—Show the balance of account 152.

Item 21, Current Maturities of Operating Concerns Acquired—Show the balance of account 153.

Item 22, Current Maturities of Other Securities—Show the balance of account 154.

Item 23, Other Current Assets—Show the balance of account 156.

Item 24, (a), Furniture & Equipment—Show the balance of account 240.

Item 24, (b), Less: Accumulated Depreciation—Show the balance of account 241.

Item 25, Other—Show the aggregate of balances of accounts 230, 231, 250, 251, 252, 265 thru 269.

Item 26, Total Assets—Show the aggregate of Items 12, 13 and 14 through 25.

NOTE: The following 6 forms are applicable only to corporations. The next 6 forms are applicable only to partnerships.

Name of Licensee:				
License Number:				
(Use only if Licensee is a Corporation)				

Statement of Financial Position (Continued)

As of __________

Liabilities and Capital				
Long-Term Debt (Net of Current Maturities):				
27. Notes and Debentures Payable to or Guaranteed by SBA				
28. Notes and Debentures Payable to Others				
29. Total				
Current Liabilities:				
30. Accounts Payable and Accounts Payable Due Parent				
31. Accrued Interest Payable				
32. Accured Taxes Payable				
33. a. Current Maturities of Line 27				
b. Current Maturities of Line 28				
34. Dividends Payable				
35. Other Current Liabilities				
36. Total				
Other Liabilities:				
37. Trust Receipts				
38. Deferred Credits				
39. Other Liabilities				
40. Total Liabilities				
Capital				
41. Capital Stock				
42. Paid-in Surplus				
43. Paid-in Capital Stock and Surplus				
44. 3% Preferred Stock Issued (301(d) Licensees only)				
45. Unrealized Gain (Loss) on Securities Held				
46. Non-Cash Gains/Income (Note 1)				
47. Undistributed Net Realized Earnings				
(a) Restricted—Equal to Cost of Treasury Stock				
(b) Free				
(c) Subtotal (47(a) plus 47(b))				
48. Undistributed Realized Earnings				
49. Total				
50. Less Cost of Treasury Stock				
51. Total Capital				
52. Total Liabilities & Capital				

(Note 1) Note to Item 46 should show (a) amount of non-cash gains on sale of securities and (b) income from investments reported on the equity method of accounting.

Item 27, Notes and Debentures Payable to or Guaranteed by SBA—Show the aggregate of balances in accounts 300, 301 and 310.

Item 28, Notes and Debentures Payable to Other—Show the aggregate of balances in accounts 311, 312, 313 and 320.

Item 29, Total—Show the aggregate of Items 27 and 28.

Item 30, Accounts Payable and Accounts Payable Due Parent—Show the balance of account 340 and 341.

Item 31, Accrued Interest Payable—Show the balance of account 350.

Item 32, Accrued Taxes Payable—Show the aggregate of balances in accounts 351 and 354.

Item 33(a), Current Maturities of Line 27—Show the balance of account 330.

Item 33(b), Current Maturities of Line 28—Show the balance of account 331.

Item 34 for Corporations, Dividends Payable—Show the aggregate of balances in accounts 360 through 364.

Item 35, Other Current Liabilities—Show the balance of account 358.

Item 36, Total—Show the aggregate of Items 30 through 35.

Item 37, Trust Receipts—Show the aggregate of balances in accounts 370, 374 and 378.

Item 38, Deferred Credits—Show the balances of accounts 380 and 383.

Item 39, Other Liabilities—Show the balance of account 390.

Item 40, Total Liabilities—Show the aggregate of Items 29 and 36 through 39.

The following accounts are applicable only to corporate licensees and are to be reported on the Statement of Financial Position for corporations.

Item 41, Capital Stock—Show the aggregate of balances in accounts 400 through 414.

Item 42, Paid-in Surplus—Show balance of account 420.

Item 43, Paid-In Capital Stock and Surplus—Show the aggregate of items 41 and 42.

Item 44, 3% Preferred Stock Issued to SBA 301(d) Licensee's Only)—Show the balance of account 430.

Item 45, Unrealized Gain (Loss) on Securities Held—Show the aggregate of balances of account 440 less 445 and 448.

Item 46, Non-Cash Gain/Income—Show he balance of account 450 and 463.

Item 47, Undistributed Net Realized Earn-ngs—Undistributed Net Realized Earnings s the amount of realized earnings minus he amount of non-cash gains and non-cash ncome from investments reported on the quity method of accounting. This will be he amount of account 451. Treasury Stock s a restriction on the amount of earnings vailable for distributions to stockholders. Capitalization of retained earnings by a credit to Capital Stock and/or Paid-in Surplus is a distribution to stockholders.

Item 47(a), Restricted-Equal to Cost of Treasury Stock—Show the aggregate of the balances in accounts 415 through 419.

Item 47(b), Free—This is the amount of undistributed net realized earnings available for distribution if there is a restriction due to the presence of Treasury Stock. The amount to be shown as Item 47(b) is the difference between Account Number 451 and the amount shown as Item 47(a). If Account Number 451 has a debit balance do not report the cost of Treasury Stock as Item 47(a). If the licensee does not have Treasury Stock Item 47(b) and Item 47(c) will be identical. In such instance it will be necessary to complete both Item 47(b) and 47(c) since Item 47(b) is required for other computations on the Form 468.

Item 47(c), Subtotal—This is the sum of Items 47(a) and 47(b).

Item 48, Undistributed Realized Earnings—Show the aggregate of Items 46 and 47.

Item 49, Total—Show the aggregate of Items 43, 44, 45 and 48.

Item 50, Less Cost of Treasury Stock—Show the sum of the balances in Account Numbers 415 through 419.

Item 51, Total Capital—Subtract Item 50 from Item 49.

Item 52, Total Liabilities and Capital—Add Item 40 and Item 51.

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ame of Licensee: ....

icense No.: ....

(Use Only if Licensee is a Corporation)

Computation of Earnings Available for Dividend Declaration or Capitalization

OTE.—Retained Earnings Available for Dividend Declaration or Capitalization In Accordance With SBA Regulations Computed As Follows:

Undistributed Net Realized Earnings (Line 47(b))		
Less: Allowance for Losses on Loans & Investments		
Retained Earnings Available for Distribution or Capitalization		

tatement of Undistributed Realized Earnings—Lines 46, 47, 48:

Description	Non-Cash Gains/Income (46)	Undistributed Net Earnings (47)	Total (48)
1. Beginning Balance			
2. Additions:			
a. Net Investment Income	/////////////		
b. Realized Gain (Loss) on Sale of Securities	/////////////		
c. Non-cash Gains on Distributions In Kind (Note 1)			
d. ______			
e. Total Additions			
3. Adjust: Collections of Non-cash Gain	( )		/////////////
4. Total (Lines 1, 2, 3)			
5. Deductions:			
a. Dividends—Cash	/////////////		

b. Dividends—Stock	/////////////		
c. Dividends-In Kind (Note 2)			
d. ______			
e. Total Deductions			
6. Ending Balance			
(Note 1) Read Instructions Carefully			
(Note 2) Name of SBC			
Description of assets being distributed			

D. *Statement of Undistributed Realized Earnings (Page 5 Corp.)*—This statement is designed to analyze the activity in undistributed realized earnings by non-cash gains/income and undistributed net earnings realized. The ending balances of this statement are the same as items 46 through 48 on the Statement of Financial Position.

Column 1: Non-Cash Gains activity can be determined by reviewing account 450 and 463.

Column 2: Undistributed Net Earnings activity can be determined by reviewing account 451.

1. *Beginning Balance*—In column 1, show the beginning balances of accounts 450 and 463 and in column 2, show the beginning balances of account 451. These amounts should agree with the ending balances shown on the statement for the prior period.

2. (a) *Net Investment Income*—State as Non-cash income undistributed net earnings as applicable that amount shown as item 33 on the Statement of Operations Realized.

(b) *Realized Gain (Loss) on Sale of Securities*—Show the balances in accounts 461 and 462.

(c) *Non-cash Gains on Distributions In Kind*—In column 1 report the amount of unrealized gains on any distributions in kind during the period covered by this report.

3. *Adjustments: Collections of Non-Cash Gains*—Will be a decrease in column 1 "Non-Cash Gains" and will be an increase in column 2 "Undistributed Net Earnings." There will be no effect on column 3, "Total".

4. *Total*—Aggregate of lines 1, 2, & 3.

5. *Deductions:*

(a) and (b)—Are to be paid out of undistributed net earnings only. Therefore, dividends will be entered in column 2.

(c) *Dividends In Kind*—Column 1 show the amount of non-cash gain reported in column 1 Item 2(c). In column 2 show the cost of the asset being distributed. The total shown in column 3 is the value as reported for the asset on the SBA Form 468 immediately prior to the distribution.

6. *Ending Balance*—Is determined by subtracting 5(e) "Total Deductions" from item 4 which represents the beginning balance plus additions.

(Use Only if Licensee is a Corporation)

Name of Licensee: ____________

License No.: ____________

Statement of Operations Realized for——Months Ended———

Investment Income:	
1. Interest on Loans and Debt Securities	
2. Dividend Income	
3. Income from Investments Reports on the Equity Method of Accounting	
4. Management Services	
5. Application and Other Fees	
6. Interest on Invested Idle Funds	
7. Income from Assets Acquired in Liquidation of Loans and Investments (Net of $______ Expenses)	
8. Other Income Income	
9. Gross Investment Income	
Expenses:	
10. Interest on Long-term Debt	
11. Commitment Fees	
12. Other Financial Costs	
13. Officer Salaries	
14. Employee Salaries	
15. Employee Benefits	
16. Investment Advisory and Management Services	
17. Directors' and Stockholders' Meetings	
18. Advertising & Promotion	
19. Appraisal & Investigation	
20. Communication	
21. Legal Fees	
22. Travel Expense	
23. Cost of Space Occupied	

24. Depreciation and Amortization Expense		
25. Audit and Examination Fees		
26. Insurance Expense		
27. Taxes Expense (Excluding Income Taxes)		
28. Provision for Losses on Accounts Receivables		
29. Miscellaneous Expenses		
30. Total Expenses		
31. Net Investment Income Before Provision for Income Taxes		
32. Provision for Income Taxes (Note 1)		
33. Net Investment Income (Loss)		
Realized Gain (Loss) on Sale of Securities:		
34. Net Sale Price		
35. Cost of Securities Sold		
36. Net Prior to Income Tax Provision		
37. Provision for Income Taxes		
38. Realized Gain (Loss) on Sale of Securities		

NOTE (1).—Compute a tax only if lines 31 or line 36 show a gain.

E. Statement of Operations Realized—Corporation

This statement is designed to measure separately Net Investment Income (Loss) and Realized Gain (Loss) on Sale of Securities. Such measurement is of realized operations only and is on the accrual basis of accounting.

1. *Net Investment Income*—is the result of measuring revenue and expense associated with investment and management assistance activities of a licensee other than realized gain (loss) on securities sold. Revenue is organized by source; i.e., from portfolio, from services provided, or from other sources.

Provision for taxes is the final measurement prior to determination of Net Investment Income.

2. *Realized Gain (Loss) on Sale of Securities*—is a function of operations that is measured separately from Net Investment Income. While the Statement of Realized Gain (Loss) on Sale of Securities provides a detailed analysis of realized gain or losses, the Statement of Operations shows in the aggregate, net sales price of securities sold during the period, the cost of such securities sold and a provision for taxes on the resulting gain. The remainder becomes net realized gain (loss) on sale of securities.

Although an allowance for loss on securities may be established for valuation and in some cases tax purposes, such allowances when provided are not reflected as an expense in measuring investment income. Rather, they are measured in the Statement of Unrealized Gain (Loss) on Securities Held as a component of unrealized depreciation which is an offset against unrealized appreciation. For this reason, the entire loss is reported in this statement when realized and the allowance for loss on the security is reduced by the amount of allowance previously established.

3. *Description by Line Item*—The following is a description by line item as to how the amounts shown on the Statement of Operations Realized are developed.

a. *Investment Income*—the amounts shown in items 1 through 33 of this statement are derived primarily from the general ledger accounts as follows.

Item 1, Interest on Loans and Debt Securities—Show the aggregate of balances in accounts 512, 516 and 541.

Item 2, Dividend Income—Show the balance of account 540.

Item 3, Income from Investments Reported on The Equity Method of Accounting—Show the balance of Account 542.

Item 4, Management Services—Show the balance of account 532.

Item 5, Application and Other Fees—Show the aggregate of balances in accounts 500, 534 and 536.

Item 6, Interest on Invested Idle Funds—Show the balance of account 510.

Item 7, Income from Assets Acquired in Liquidation of Portfolio Securities—Show the balance of account 582 net of the balance of account 710. Also, show the balance of account 710 parenthetically.

Item 8, Other Income—Show the aggregate of balances in accounts 520 and 584.

Item 9, Gross Investment Income—Show the aggregate of items 1 through 8.

Item 10, Interest on Long-term Debt—Show the aggregate of balances in accounts 610 and 622.

Item 11, Commitment Fees—Show the balance of account 600.

Item 12, Other Financial Costs—Show the balance of account 642.

Item 13, Officer Salaries-Show the balance of account 663—1.

Item 14, Employee Salaries-Show the balance of account 663—2.

Item 15, Employee Benefits—Show the balance of account 670.

Item 16, Investment Advisory and Management Service—Show the balance of accounts 659 and 660.

Item 17, Director's and Stockholder's Meetings-Show the balance of account 657—1.

Item 18, Advertising and Promotion—Show the balance of account 650.

Item 19, Appraisal and Investigation—Show the balance of account 651.

Item 20, Communication—Show the balance of account 653.

Item 21, Legal Fees—Show the balance of account 661.

Item 22, Travel Expense—Show the balance of account 665.

Item 23, Cost of Space Occupied—Show the balance of account 654.

Item 24, Depreciation & Amortization Expense—Show the aggregate of balances in accounts 655 and 656.

Item 25, Audit and Examination Fees—Show the balance of account 652.

Item 26, Insurance Expense—Show the balance of account 658.

Item 27, Taxes Expense (Excluding Income Taxes)—Show the balance of account 664.

Item 28, Provision for Losses on Receivables—Show the balance of account 680.

Item 29, Miscellaneous Expenses—Show the aggregate of balances in accounts 672, 679, and 715.

Item 30, Total Expenses—Show the aggregate of items 10 through 29.

Item 31, Net Investment Income before Provision for Income Taxes—Show the balance of amount of item 9 less item 30.

Item 32, Provision for Income Taxes—Show the balance of account 720.

Item 33, Net Investment Income (Loss)—Item 31 minus Item 32.

Item 34, Net Sales Price—Show net sales price.

Item 35, Cost of Securities Sold—Show cost.

Item 36, Net Prior to Income Tax Provision—Line 34 minus line 35.

Item 37, Provisions for Income Taxes—Show amount of Income Taxes, if any, applicable to Gains on sale of securities.

Item 38, Realized Gain (Loss) on Sale of Securities—Item 36 minus Item 37.

ANALYSIS OF CAPITAL STOCK AND PAID-IN SURPLUS AND COMPUTATION OF REGULATORY CAPITAL

	Capital stock (note 1)	Paid-in surplus	Total
1. Balance at Beginning of Fiscal Year			
2. Additions:			
(a) Capital Stock Issued for Cash			
(b) Stock Dividends Issued for Capitalized Free Undistributed Net Realized Earnings			
(c) Capital Stock for Service Rendered*			
(d) Capital Stock Issued for Assets Other than Cash or Services			
(f) Other Credits (Explain)*			
(e) Gain on Sale of Treasury Stock			
3. Total Additions (The sum of Items 2(a) through 2(f)			
4. Subtotal (Line 1 plus Line 3)			
5. Deductions:			
(a) Retirement of Capital Stock			
(b) Loss of Sale of Treasury Stock (Note 2)			
(c) Distributions in Partial Liquidation			
(d) Other Debits (Explain)			
6. Total Deduction (The sum of Items 5(a) through 5(d))			
7. Balance at End of Fiscal Year			
Computation of Regulatory Capital for Leverage Purposes:			
8. Regulatory Deductions: (Note 3)			
(a) Organization Expense (Note 4)			
(b) Capital Stock Issued for Services			
(c) Capital Stock Issued for Assets Other than Cash or Services			
(d) Other Non-monetary Items			
(e) Investment in 301(d) Licensee			
(f) Treasury Stock at Cost			
(g) Other (Explain)*			

Analysis of Capital Stock and Paid-in Surplus and Computation of Regulatory Capital—Continued

	Capital stock (note 1)	Paid-in surplus	Total
9. Total Regulatory Deductions (The sum of Items 8(a) through 8(g))			
10. Regulatory Capital For Leverage Purposes (Line 7 Minus Line 9)			
Computation of Regulatory Capital for Overline Purposes:			
11. Net Unrealized Gains as Defnied by Section 107.303(b) of the Regulations (Note 5)			
12. Regulatory Capital For Overline Purpose (Line 10 Plus Line 11)			
*Give complete details of these items by means of footnotes.			

NOTE 1.—Capital Stock is the sum of the amounts of all classes of capital stock.

NOTE 2.—If Paid-in Surplus is not sufficient to absorb the entire amount of loss on the Sale of Treasury Stock, the amount of loss in excess of Paid-in Surplus will be charged against Undistributed Net Realized Earnings as shown on line 47(b) of the Statement of Financial Position.

NOTE 3.—The deductions listed in Items 8(b), 8(c), 8(d) amd 8(g) are total amounts of these items from time of organization to the end of the reporting period.

NOTE 4.—If the amount of cash contributed for the organization expense was never credited to Capital Stock or Paid-in Surplus, it should be so stated and explained by a footnote.

NOTE 5.—Licensees who rely on this section to increase the amount of their overline limitation will submit an addition to this schedule detailing the following information:

1. Name of small business concern.
2. Market in which traded.
3. Class of security.
4. Cost.
5. Value.
6. Amount of unrealized appreciation.
7. The total amount of unrealized appreciation on the securities listed.
8. The other adjustments reported on line 13 of the statement of unrealized gain (loss) on securities held.
9. The other adjustments required by 107.303b.
10. Names of market makers.

ANALYSIS OF CAPITAL STOCK, PAID-IN SURPLUS AND COMPUTATION OF REGULATORY CAPITAL

Line 1 Enter the amount shown on Form 468 as the balance at the end of the prior fiscal period.

Line 2(a) Capital Stock Issued for Cash—In column 1 enter the amount of par value or stated value of the stock issued. In column 2 enter the amount of cash received in excess of par or stated value. In column 3 enter the total of columns 1 and 2.

Line 2(b) Stock Dividends Issued for Capitalized Free Undistributed Net Realized Earnings—In column 1 enter the amount of par value or stated value of the stock issued. In column 2 enter the amount of fair market value of the stock in excess of the par or stated value of the stock. In column 3 enter the total of columns 1 and 2. This amount will be the amount charged against retained earnings.

Line 2(c) Capital Stock Issued for Services Rendered—In column 1 enter the amount of par or stated value of the stock issued. In column 2 enter the amount of fair market value of the services rendered in excess of the par or stated value of the stock. In column 3 enter the total of columns 1 and 2.

Line 2(d) Capital Stock Issued for Assets Other than Cash or Services—In column 1 enter the amount of par or stated value of the stock issued. In column 2 enter the amount of fair market value of the asset in excess of the par or stated value of the stock. In column 3 enter the total of columns 1 and 2.

Line 2(e) Gain on Sale of Treasury Stock—Enter the amount of gain on the sale of treasury stock in columns 2 and 3.

Line 2(f) Other Credits—Enter the amount of the credit in either column 1 or 2 or both and column 3.

Line 3 Total Additions—Enter the total of lines 2(a) through 2(f) of columns 1, 2 and 3.

Line 4 Subtotal—The total of line 1 and lines for columns 1, 2 and 3.

Line 5(a) Retirement of Capital Stock—In column 1 enter the amount of par or stated value of the stock being retired. In column 2 enter the amount appropriate circumstances. In column 3 enter the total of columns 1 and 2.

Line 5(b) Loss of Sale of Treasury Stock—Enter the amount of loss in columns 2 and 3 but not in excess of the balance of Paid-in Surplus.

Line 5(c) Distributions in Partial Liquidation—Enter the amount of the partial liquidation in either column 1 or 2 or both, appropriate to the facts and in column 3.

Line 5(d) Other Debits—Enter the amount of the debit in either column 1 or 2 or both and column 3.

Line 6 Total Deductions—Enter the total of lines 5(a) through 5(d) of columns 1, 2 and 3.

Line 7 Balance at the End of the Fiscal Period—Subtract line 6 from line 4 for columns 1, 2 and 3.

Line 8(a) Organization Expense—Enter the amount of organization expenses whether or not amortized.

Line 8(b) Capital Stock Issued for Services--Enter the amount credited to both Capital and Paid-in Surplus for services since date of organization.

Line 8(c) Capitol Stock Issued for Assets Other than Cash or Services—Enter the amount credited to both Capital Stock and Paid-in Surplus for assets other than cash or services since date of organization. At such time as the asset is converted to cash the amount of cash received may be considered to have been for stock issued. An adjustment to Paid-in Surplus may be necessary when the asset is converted to cash.

Line 8(d) Other Non-monetary Items—Enter the amount of other non-monetary items credited to either Capital Stock or Paid-in Surplus or both since date of organization.

Line 8(e) Investment in 301(d) Licensee—Enter the amount of investment in 301(d) licensee.

Line 8(f) Treasury Stock at Cost—Enter the cost of Treasury Stock.

Line 8(g) Other—Enter any other necessary adjustments.

Line 9 Total Regulatory Adjustments—Enter the sum of lines 8(a) through 8(f).

Line 10 Regulatory Capital for Leverage Purposes—Subtract line 9 from line 7 and enter.

Line 11 Net unrealized gains as defined by § 107.303(b)—Go to Note 5 prepare the necessary information and enter the result here.

Line 12 Regulatory Capital for Overline Purposes—Add line 11 to line 10 and enter.

(Use Only If Licensee Is a Corporation)

Name of Licensee ....

License Number ....

Statement of Changes in Financial Position for—— Months Ended————

1. Beginning Cash and Invested Funds Position		$
Funds Were Provided From:		
2. Net Investment Income	$	
3. Depreciation, Amorization, Provision for Loss on Receivable		
4. Realized Gain (Loss) on Sale of Securities		
5. Decrease in Portfolio Securities		
6. Decrease in Assets Acquired		
7. Decrease in Operating Concerns Acquired		
8. Decrease in Other Securities		
9. Decrease in Current Assets (Excluding Cash and Invested Idle Funds)		
10. Decrease in Other Assets		
11. Increase in Current Liabilities		
12. Increase in Other Liabilities		
13. Increase in Long-Term Debt:		
a. Due to or Guaranteed by SBA		
b. Due to Others		
14. Sale of Licensee's Stock		
15. Total Funds Provided	$	
16. Total Funds Available	$	
Funds Were Used For:		
17. Increase in Portfolio Securities		
18. Increase in Assets Acquired		
19. Increase in Operating Concerns Acquired		
20. Increase in Other Securities		
21. Increase in Current Assets (Excluding Cash and Invested Idle Funds)		
22. Increase in Other Assets		
23. Decrease in Current Liabilties (Excluding Dividends)		
24. Decrease in Other Liabilities		
25. Decrease in Long-Term Debt:		
a. Due to or Guaranteed by SBA		
b. Due to Others		

26. Payment of Dividends		
27. Redemption of Stock		
28. Total Funds Used		
29. Ending Cash and Invested Idle Funds Position		$

NOTE.—Unrealized Gain (Loss) on Securities Held is not reflected in the above statement as it has no effect upon source or application of funds. All increases and decreases from the balance sheet in the above schedule are net after the deduction of non-cash items EXCEPT THE NON-CASH ITEMS REPORTED ON LINE 3 ABOVE. *Furnish a schedule of non-cash items for each applicable category.*

F. Statement of Changes in Financial Position for Corporations

The Statement of Change in Financial Position is to be inclusive of all changes in financial position resulting from transactions. However, the statement does not include changes in unrealized gains (loss) on securities held which are based on subjective determinations by the Board of Directors and not based on transactions. The objectives of this statement are (1) to summarize the extent to which the licensee has generated cash and invested idle funds and (2) to complete the disclosure of changes in financial position during the period.

The following description by line item explains how the amounts on the Statement of Changes in Financial Position are developed.

Item 1, Beginning Cash and Invested Funds Position—The total of line item 14, Cash, and line item 15, Invested Idle Funds Assets, as reported on Form 468 at the end of the prior fiscal period.

Funds were Provided From:

Item 2, Net Investment Income (Loss)—Enter the amount shown on line 33 of the Statement of Operations Realized.

Item 3, Depreciation, Amortization, Provision for Loss on Receivables—Enter the total of amounts shown in line items 24 and 28 of the Statement of Operations Realized and the amount of account 672 included in item 29 of the Statement of Operations Realized.

Item 4, Realized Gain (Loss) on Sale of Securities—Enter the amount shown on line 38 of the Statement of Operations Realized.

Item 5, Decrease in Portfolio Securities—Enter the amount of net change in Item 4, Cost column of the Statement of Financial Position if that amount is a decrease during the period. Do not include current maturities.

Item 6, Decrease in Assets Acquired—Enter the amount of net change in Item 7, Cost column of the Statement of Financial Position if that amount is a decrease during that period. Do not include current maturities.

Item 7, Decrease in Operating Concerns Acquired—Enter the amount of net change in Item 8, Cost column of the Statement of Financial Position if that amount is a decrease during the period. Do not include current maturities.

Item 8, Decrease in Other Securities—Enter the amount of net change in Item 9, Cost column of the Statement of Financial Position if that amount is a decrease during the period. Do not include current maturities.

Item 9, Decrease in Current Assets (Excluding Cash and Invested Idle Funds)—Enter the amount of net change in Items 16 through 23 of the Statement of Financial Position if that amount is a decrease during that period.

Item 10, Decrease in Other Assets—Enter the amount of net change in Items 13, 24 and 25 of the Statement of Financial Position if that amount is a decrease during the period.

Item 11, Increase in Current Liabilities—Enter the amount of net change in Items 30 through 35 of the Statement of Financial Position if that amount is an increase during the period.

Item 12, Increase in Other Liabilities—Enter the amount of net change in Items 37, 38 and 39 of the Statement of Financial Position if that amount is an increase during the period. Do not include the amount of account 448.

Item 13(a), Due to or Guaranteed by SBA—Enter the amount of net change in Item 27 of the Statement of Financial Position if that amount is an increase during the period.

Item 13(b), Due Others—Enter the amount of net change in Item 28 of the Statement of Financial Position if that amount is an increase during the period.

Item 14, Sale of Licensee's Stock—Enter that amount of net change in Items 41 through 44 of the Statement of Financial Position if that amount is an increase during the period and the licensee is a corporation.

Item 15, Total Funds Provided—Enter the total of Items 2 through 14 of the Statement of Change in Financial Position.

Item 16, Total Funds Available—Enter the total of Items 1 and 16 of the Statement of Change in Financial Position.

Item 17, Increase in Portfolio Securities—Enter the amount of net change in Item 4 of the Cost column of the Statement of Financial Position if that amount is an increase during the period.

Item 18, Increase in Assets Acquired—Enter the amount of net change in Item 7, Cost column of the Statement of Financial Position if that amount is an increase during the period.

Item 19, Increase in Operating Concerns Acquired—Enter the amount of net change in Item 8, Cost column of the Statement of Financial Position if that amount is an increase during the period.

Item 20, Increase in Other Securities—Enter the amount of net change in Item 9, Cost column of the Statement of Financial Position if that amount is an increase during the period.

Item 21, Increase in Current Assets (Excluding Cash and Invested Idle Funds)—Enter the amount of net change in Items 16 through 23, of the Statement of Financial Position if that amount is an increase during the period.

Item 22, Increase in Other Assets—Enter the amount of net change in Items 13, 24 and 25 of the Statement of Financial Position if that amount is an increase during the period.

Item 23, Decrease in Current Liabilities (Excluding Dividends)—Enter the amount of net change in Items 30 through 35 of the Statement of Financial Position if that amount is a decrease during the period.

Item 24, Decrease in Other Liabilities—Enter the net amount of change in Items 37, 38 and 39 of the Statement of Financial Position if that amount is a decrease during the period. Do not include the amount of account 448.

Item 25(a), Due or Guaranteed by SBA—Enter the net amount of change in Item 27 of the Statement of Financial Position if that amount is a decrease during the period.

Item 25(b), Due Others—Enter the net amount of change in Item 28 of the Statement of Financial Position if that amount is a decrease during the period.

Item 26, Payment of Dividends—Enter the amounts shown in accounts 360 through 364.

Item 27, Redemption of Stock—Enter the amount of net change in Items 41 through 44 of the Statement of Financial Position if that amount is a decrease during the period.

Item 28, Total Funds Used—Enter the sum of Items 17 through 27 of the Statement of Change in Financial Position.

Item 29, Ending Cash and Invested Idle Funds Position—Subtract Item 28 from Item 16. The balance will equal the sum of Items 14 plus 15 of the Statement of Financial Position.

(Use Only If Licensee Is a Corporation)

Licensee: ....

License Number: ....

Statement of Unrealized Gain (Loss) on Securities Held for —— Months Ended	(1) Beginning balance	(2) Ending balance	(3) (2)-(1) Net Changes
Unrealized Appreciation:			
1. Portfolio Securities			
2. Assets Acquired in Liquidation of Portfolio Securities			
3. Operating Concerns Acquired			
4. Other Securities			
5. Total (Note 1)			
Unrealized Depreciation:			
6. Portfolio Securities			
7. Assets Acquired in Liquidation of Portfolio Securities			
8. Operating Concerns Acquired			
9. Other Securities			
10. Total			
11. Unrealized Appreciation (Net of Depreciation) on Securities Held before fees paid on gains or income taxes			
12. Less Provision for Taxes			
13. Unrealized Gain (Loss) on Securities Held (Note 2)			

Note (1) Disclose by footnote the amount of any potential fees that would be due on the amount shown on line 5 if the amount of unrealized appreciation were to be realized.

Note (2) Do not compute tax effect if line 11 is a loss.

Realized Loss Experience on Receivables, Loans and Investments

[Dollars Rounded to the Nearest Thousand]

Description	Current year loss
Notes, Accounts and Accrued Interest Receivable	
Loans	
Debt Securities	

REALIZED LOSS EXPERIENCE ON RECEIVABLES, LOANS AND INVESTMENTS—Continued

[Dollars Rounded to the Nearest Thousand]

Description	Current year loss
Equity Interests	
Assets Acquired in Liquidation of Portfolio Securities	
Operating Concerns Acquired	
Other Securities	
Total	

G. Statement of Unrealized Gain (Loss) on Securities Held

This statement summarizes the results of the valuation process of securities held as of the statement date as compared to the previous statement date and discloses the net change in the Unrealized Gain (Loss) on Securities Held.

The types of securities held are the primary groupings of loans and investments as set forth in items 1 through 10 of the Statement of Financial Position and are (1) Portfolio Securities, (2) Assets Acquired in Liquidation of Portfolio Securities, (3) Operating concerns acquired, and (4) other securities.

In arriving at net unrealized gain (loss) on securities held, consideration must be given to unrealized appreciation (valuation above cost) and unrealized depreciation (valuation below cost) of such securities. After adjusting the net unrealized appreciation (depreciation) for the appropriate tax effect, the remaining amount will represent unrealized gain (loss) on securities held.

Items 1 through 11 are without the estimated tax effect.

Item—the amount shown in column 3 Item 4 of the Statement of Financial Position.

Item 2—the amount shown in column 3 Item 7 of the Statement of Financial Position.

Item 3—the amount shown in column 3 Item 8 of the Statement of Financial Position.

Item 4—the amount shown in column 3 Item 9 of the Statement of Financial Position.

Item 5—the amount shown in column 3 Item 10 of the Statement of Financial Position.

Item 6—the amount shown in column 2 Item 4 of the Statement of Financial Position.

Item 7—the amount shown in column 2 Item 7 of the Statement of Financial Position.

Item 8—the amount shown in column 2 Item 8 of the Statement of Financial Position.

Item 9—the amount shown in column 2 Item 9 of the Statement of Financial Position.

Item 10—the amount shown in column 2 Item 10 of the Statement of Financial Position.

Item 11—Item 5 minus Item 10.

Item 12 will be the estimated taxes that would be due.

CAUTION DO NOT COMPUTE A TAX BENEFIT IF ITEM 13 IS A NET UNREALIZED DEPRECIATION

Realized Loss Experience on Receivables, Loans and Investments.

Furnish in this schedule by categories shown, the amount of loss experienced on loans and investments as well as receivables resulting from income realization. The loss experience will be the actual loss experience during the current period. The amounts shall be rounded to the nearest thousand.

Name of Licensee: ....

License Number: ....

(Use Only if Licensee is a Partnership)

Statement of Financial Position (continued) as of ———

Liabilities and Capital

Long-Term Debt (Net of Current Maturities):				
27. Notes and Debentures Payable to or Guaranteed by SBA				
28. Notes and Debentures Payable to Others				
29. Total				

Current Liabilities:				
30. Accounts Payable and Accounts Payable Due Parent				
31. Accrued Interest Payable				
32 Accrued Taxes Payable				
33. a. Current Maturities of Line 27				
b. Current Maturities of Line 28				
34. Distributions Payable				
35. Other Current Liabilities				
36. Total				
Other Liabilities:				
37. Trust Receipts				
38. Deferred Credits				
39. Other Liabilities				
40. Total Liabilities				
	General Partner(s)	Limited Partner(s)	Combined	
Partnership Capital:				
41. Partners' Permanent Capital Contributed				
42. Unrealized Gain (loss) on Securities Held				
43. Non-Cash Gains/Income (Note 1)				
44. Undistributed Net Realized Earnings (Earned Capital)				
45. Total Partners' Capital				
46. Total Liabilities and Capital				

(Note 1) Note to Item 43 should show (a) amount of non-cash gains on sale of securities and (b) income from investments reported on the equity method of accounting.

Item 27, Notes and Debentures Payable to or Guaranteed by SBA—Show the aggregate of balances in accounts 300, 301 and 310.

Item 28, Notes and Debentures Payable to Other—Show the aggregate of balances in accounts 311, 312, 313 and 320.

Item 29, Total—Show the aggregate of Items 27 and 28.

Item 30, Accounts Payable—Show the balance of account 340.

Item 31, Accrued Interest Payable—Show the balance of account 350.

Item 32, Accrued Taxes Payable—Show the aggregate of balances in accounts 351 and 354.

Item 33(a), Current Maturities of Line 27—Show the balance of account 330.

Item 33(b), Current Maturities of Line 28—Show the balance of account 331.

Item 34 for Partnerships, Partnership Distributions Payable and Accounts Payable Due Partners—Show the aggregate of balances 365 through 369.

Item 35, Other Current Liabilities—Show the balance of account 358.

Item 36, Total—Show the aggregate of Items 30 through 35.

Item 37, Trust Receipts—Show the aggregate of balances in accounts 370, 374 and 378.

Item 38, Deferred Credits—Show the balances of accounts 380 and 383.

Item 39, Other Liabilities—Show the balance of account 390.

Item 40, Total Liabilities—Show the aggregate of Items 29 and 36 through 39.

The following accounts are applicable only to partnership licensees and are to be reported on the Statement of Financial Position for partnerships.

Item 41, Partner's Permanent Capital Contributions—Show the balances in accounts 470 through 476.

Item 42, Unrealized Gain (Loss) on Securities Held—Show the aggregate of balances of accounts 440 less 445.

Item 43, Non-Cash Gain/Income—Show the balance of accounts 450 and 468.

Item 44, Undistributed Net Realized Earnings—Show the balance in accounts 493 through 496.

Item 45, Total Partners Capital—Show the totals of Item 41 through 44.

Item 46, Total Liabilities and Capital—Show the total of Item 40 plus Item 45.

Name of Licensee: ....

License Number: ....

(Use Only if Licensee is a Partnership)

Computation of Earnings Available For Distribution to Partners or Capitalization

NOTE.—Retained earnings available for distribution to partners and/or capitalization in accordance with SBA Regulations is computed as follows:

Undistributed Net Realized Earnings—Line 44			$
Less: Allowance For Loss on Loans and Investments			
Retained Earnings Available For Distribution or Capitalization			$

Statement of Undistributed Realized Earnings Lines 43 and 44

Description	Non-Cash Gains/ Income 43	Undistributed Net Earnings 44	Total 45
1. Beginning Balance			
2. Additions:			
a. Net Investment Income			
b. Realized Gain (Loss) on Sale of Securities			
c. Non-cash Gains on Distributions In Kind (Note 1)			
d.			
e. Total Additions			
3. Adjust: Collections of Non-cash Gain	( )		//////////
4. Total (Lines 1, 2, 3,)			
5. Deductions:			
a. Distributions—Cash	//////////		
b. Distributions—In Kind (Note 2)			
c.			
d. Total Deductions			
6. Ending Balance			
(Note 1) Read instructions carefully:			
(Note 2) Name of SBC			
Description of assets being distributed			

H. Statement of Undistributed Realized Earnings (Part.)

This statement is designed to analyze the activity in undistributed realized earnings by non-cash gains on sale of securities and undistributed net earnings realized. The ending balances of this statement are the same as items 43 and 44 on the Statement of Financial Position.

Column 1: Non-Cash Gains activity can be determined by reviewing account 450.

Column 2: Undistributed Net Earnings activity can be determined by reviewing account 451.

1. *Beginning Balance*—In column 1, show the beginning balances of accounts 450 and 468 in column 2, show the beginning balance of account 451. These amounts should agree with the ending balances shown on the statement for the prior period.

2. (a) *Net Investment Income*—State as undistributed net earnings that amount shown as item 31 on the Statement of Operations Realized.

(b) *Realized Gain (Loss) on Sale of Securities*—Show the balances in accounts 466 and 467.

(c) *Non-Cash Gains on Distributions In Kind*—In column 1 report the amount of unrealized gains on any distributions in kind during the period covered by this report.

3. *Adjustments: Collections of Non-Cash Gains*—Will be a decrease in column 1 "Non-Cash Gains" and will be an increase in column 2 "Undistributed Net Earnings."

4. *Total*—Aggregate of lines 1, 2, & 3.

5. *Deductions:*

(a) *Distributions to Partners*—are to be paid out of undistributed earnings only. Therefore, distributions will be entered in column 2.

(b) *Dividends In Kind*—Column 1 show the amount of non-cash gain reported in column 1 Item 2(c). In column 2 show the cost of the asset being distributed. The total is the value as reported for the asset on the SBA Form 468 immediately prior to the distribution.

6. *Ending Balance*—Is determined by subtracting 5(d) "Total Deductions" from item 4 which represents the beginning balance plus additions.

(Use Only if Licensee is a Partnership)

Name of Licensee ....

License Number ....

Statement of Operations Realized For——Months Ended————

Investment Income:		
1. Interest on Loans and Debt Securities		
2. Dividend Income		
3. Income from Investments Reported on the Equity Method of Accounting		
4. Management Services		
5. Application and Other Fees		
6. Interest on Invested Idle Funds		
7. Income from Assets Acquired in Liquidation of Loans and Investments (Net of $_____ Expenses)		
8. Other Income (Note 1)		
9. Gross Investment Income (Note 1)		
Expenses:		
10. Interest on Long-term Debt		
11. Commitment Fees		
12. Other Financial Costs		
13. Partners' Salaries		
14. Employee Salaries		
15. Employee Benefits		
16. Investment Advisory and Management Services		
17. General and Limited Partners' Meetings		
18. Advertising & Promotion		
19. Appraisal & Investigation		
20. Communication		
21. Legal Fees		
22. Travel Expense		
23. Cost of Space Occupied		
24. Depreciation and Amortization Expense		
25. Audit and Examination Fees		
26. Insurance Expense		
27. Taxes Expense		
28. Provision for Losses on Accounts Receivables		
29. Miscellaneous Expenses*		
30. Total Expenses		
31. Net Investment Income		
Realized Gain (Loss) on Sale of Securities:		
32. Net Sale Price		
33. Cost of Securities Sold		
34. Realized Gain (Loss) on Sale of Securities		

(Note 1) Give supporting details on items 8 and 29.

I. Statement of Operations Realized—Partnerships

This statement is designed to measure separately Net Investment Income and Realized Gain (Loss) on Sale of Securities. Such measurement is of realized operations only and is on the accrual basis of accounting.

1. *Net Investment Income*—is the result of measuring revenue and expense associated with investment and management assistance activities of a licensee other than realized gain (loss) on securities sold. Revenue is organized by source; i.e., from portfolio, from services provided, or from other sources.

2. *Realized Gain (Loss) on Sale of Securities*—is a function of operations that is measured separately from Net Investment Income. While the Statement of Realized Gain (Loss) on Sale of Securities provides a detailed analysis of realized gain or losses, the Statement of Operations shows in the aggregate, net sales price of securities sold during the period, the cost of such securities sold, the remainder becomes net realized gain (loss) on sale of securities.

Although an allowance for loss on securities may be established for valuation and in some cases tax purposes, such allowances when provided are not reflected as an expense in measuring investment income. Rather, they are measured in the Statement of Unrealized Gain (Loss) on Securities Held as a component of unrealized depreciation which is an offset against unrealized appreciation. For this reason, the entire loss is reported in this statement when realized and the allowance for loss on the security is reduced by the amount of allowance previously established.

3. *Description by Line Item*—The following is a description by line item as to how the amounts shown on the Statement of Operations Realized are developed.

a. *Investment Income*—the amounts shown in items 1 through 35 of this statement are derived primarily from the general ledger accounts as follows:

Item 1, Interest on Loans and Debt Securities—Show the aggregate of balances in accounts 512, 516 and 541.

Item 2, Dividend Income—Show balance of account 540.

Item 3, Income From Investments Reported The Equity Method of Accounting—Show the balance of account 542.

Item 4, Management Services—Show the balance of account 532.

Item 5, Application and Other Fees—Show the aggregate of balances in accounts 500, 534 and 536.

Item 6, Interest on Invested Idle Funds—Show the balance of account 510.

Item 7, Income From Assets Acquired in Liquidation of Portfolio Securities—Show the balance of account 582 net of the balance of account 710. Also, show the balance of account 710 parenthetically.

Item 8, Other Income—Show the aggregate of balance in accounts 520 and 584.

Item 9, Gross Investment Income—Show the aggregate of Items 1 through 8.

Item 10, Interest on Long-term Debt—Show the aggregate of balances in accounts 610 and 622.

Item 11, Commitment Fees—Show the balance of account 600.

Item 12, Other Financial Costs—Show the balance of account 642.

Item 13, Partners Salaries—Show the balance of account 663-1.

Item 14, Employee Salaries—Show the balance of account 663-2.

Item 15, Employee Benefits—Show the balance of account 670.

Item 16, Investment Advisory and Management Service—Show the balance of account, 659 and 660.

Item 17, General and Limited Partners' Meetings—Show the balance of account 657-2.

Item 18, Advertising and Promotion—Show the balance of account 650.

Item 19, Appraisal and Investigation—Show the balance of account 651.

Item 20, Communication—Show the balance of account 653.

Item 21, Legal Fees—Show the balance of account 661.

Item 22, Travel Expense—Show the balance of account 665.

Item 23, Cost of Space Occupied—Show the balance of account 654.

Item 24, Depreciation & Amortization Expense—Show the aggregate of balances in accounts 655 and 656.

Item 25, Audit and Examination Fees—Show the balance of account 652.

Item 26, Insurance Expense—Show the balance of account 658.

Item 27, Taxes Expense (Excluding Income Taxes)—Show the balance of account 664.

Item 28, Provision for Losses on Receivables—Show the balance of account 680.

Item 29, Miscellaneous Expenses—Show the aggregate of balances in accounts 672, 679, and 715.

Item 30, Total Expenses—Show the aggregate of Items 10 through 29.

Item 31, Net Investment Income—Show the balance of amount of Item 9 less Item 30.

b. *Realized Gain (Loss) on Sale of Securities*—

Item 32, Net Sales Price—Show Net Sales Price.

Item 33, Cost of Securities Sold—Show cost.

Item 34, Net Realized Gain (Loss) on Sale of Securities—Line 32 minus 33.

ANALYSIS OF PARTNERS' PERMANENT CAPITAL CONTRIBUTION AND COMPUTATION OF REGULATORY CAPITAL

	General partner(s)	Limited partner(s)	Total
ermanent Capital Contribution:			
1. Balance at Beginning of Fiscal Year			
2. Additions:			
(a) Cash Contributions			
(b) Undistributed Net Realized Earnings Contributed to Permanent Capital			
(c) Permanent Capital Contributed for Services Rendered*			
(d) Permanent Capital Contributed for Other than Cash and Services*			
(e) Other Credits*			
3. Total Additions (The sum of Items 2(a) through 2(e))			
4. Subtotal (Line 1 plus Line 3)			
5. Deductions:			
(a) Complete Liquidation of Partners' Interest*			
(b) Partial Liquidation of Partners' Interest*			
(c) Partial Liquidation of All Partners' Interests*			

ANALYSIS OF PARTNERS' PERMANENT CAPITAL CONTRIBUTION AND COMPUTATION OF REGULATORY CAPITAL—Continued

	General partner(s)	Limited partner(s)	Total
(d) Other Debits*			
6. Total Deductions (The sum of Items 5(a) through 5(d)			
7. Balance at End of Fiscal Year			
Computation of Regulatory Capital for Leverage Purposes:			
8. Regulatory Deductions: (Note 1)			
(a) Organization Expense (Note 2)			
(b) Permanent Capital Contributed for Services			
(c) Permanent Capital Contributed for Other than Cash or Services			
(d) Other Non-monetory Items			
(e) Investment in 301(d) Licensee			
(f) Other*			
9. Total Regulatory Deductions (The sum of Items 8(a) through 8(f)			
10. Regulatory Capital for Leverage Purpoes (Line 7 Minus Line 9)			
Computation of Regulatory Capital for Overline Purposes:			
11. Net Unrealized Gains as Defined by Section 107.301(b) of the Regulations (Note 3)			
12. Regulatory Capital for Overline Purposes			

*Give complete details of these items by means of footnotes.

NOTE 1.—The deductions listed in Items 8(b), 8(c), 8(d) and 8(f) are the total amounts of these items from time or organization to the end of the reporting period.

NOTE 2.—If the amount of cash contributed for the organization expense was never credited to Permanent Capital, it should be so stated and explained by a footnote.

NOTE 3.—Licensees who rely on this section to increase the amount of their overline limitation will submit an addition to this schedule detailing the following information:

1. Name of small business concern.
2. Market in which traded.
3. Class of security.
4. Cost.
5. Value.
6. Amount of unrealized appreciation.
7. The total amount of unrealized appreciation on the securities listed.
8. The other adjustments required by Section 107.303(b).
9. The net amount reported on line 11 of Statement of Unrealized Gains (Loss).
10. Name of market makers.

ANALYSIS OF PARTNERS' PERMANENT CAPITAL CONTRIBUTIONS AND COMPUTATION OF REGULATORY CAPITAL

Line 1 Enter the amount shown on Form 468 as the balance at the end of the prior fiscal period.

Line 2(a) Cash Contributions—Enter the amount of cash contributed to Permanent Capital during the year.

Line 2(b) Undistributed Net Realized Earnings Contributed to Permanent Capital—Enter the amount transferred from Undistributed Net Realized Earnings to Permanent Capital during the year.

Line 2(c) Permanent Capital Contributed for Services Rendered—Enter the amount of services rendered which was credited to permanent capital.

Line 2(d) Permanent Capital Contributed for Other than Cash or Services—Enter the amount credited to permanent capital and explain in detail by a footnote.

Line 3 Total Additions—Enter the total of lines 2(a) through 2(e).

Line 4 Subtotal—Enter the sum of lines 1 and 3.

Line 5(a) Complete Liquidation of Partner's Interest—Enter the amount of the interest of the partner whose capital is being liquidated.

Line 5(b) Partial Liquidation of Partner's Interest—Enter the amount of interest of the partner whose permanent capital is being partially liquidated.

Line 5(c) Partial Liquidation of All Partners' Interests—Enter the amount of interest of all partners that is being liquidated. In a footnote state whether SBA has approved of the partial liquidation and whether the liquidation is one of a series leading to a complete liquidation. This line should be used when there is a pro-rata liquidation of "all" partners interests. All means "substantially all" in terms of dollar value of the partners' Permanent Capital by class.

Line 5(d) Other Debits—Enter the amount of the other debits.

Line 6 Total Deductions—Enter the total of lines 5(a) through 5(d).

Line 7 Balance at the End of Fiscal Year—Subtract line 6 from line 4.

Line 8(a) Organization Expense—Enter the amount of organization expense whether or not amortized.

Line 8(b) Permanent Captial Contributed for Services—Enter the amount credited to Permanent Capital for Services since date of organization.

Line 8(c) Permanent Capital Contributed for Other than Cash or Services—Enter the amount credited to Permanent Capital for assets other than cash or services since date organizaton. At such time as the asset is converted to cash, the amount of cash received maybe considered to be a cash contribution to Permanent Captial. An adjustment to Permanent Capital may be necessary when the asset is converted to cash.

Line 8(d) Other Non-monetary Items—Enter the amount of other non-monetary items credited to Permanent Capital since date of organization.

Line 8(e) Investment in 301(d) Licensee—Enter the amount of investment in 301(d) licensee.

Line 8(f) Other—Enter the amount of other credits to Permanent Capital since date of organization.

Line 9 Total Regulatory Deductions—Enter the sum of lines 8(a) through 8(f).

Line 10 Regulatory Capital for Leverage Purposes—Subtract line 9 from line 7.

Line 11 Net Unrealized Gains as defined by § 107.303(b)—Go to Note 3, prepare the necessary information and enter the result here.

Line 12 Regulatory Capital for Overline Purposes—Add line 11 to line 10 and enter.

(Use Only if Licensee Is a Partnership)

Name of Licensee: ....

License No.: ....

Statement of Changes in Financial Position For ____ Months Ended ________

1. Beginning Cash and Invested Funds Position		$
Fund Were Provided From:		
2. Net Investment Income	$	
3. Depreciation, Amortization, Provision for Loss on Receivables		
4. Realized Gain (Loss on Sale of Securities		
5. Decrease in Portfolio Securities		
6. Decrease in Assets Acquired		
7. Decrease in Operating Concerns Acquired		
8. Decrease in Other Securities		
9. Decrease in Current Assets (Excluding Cash and Invested Idle Funds)		
10. Decrease in Other Assets		
11. Increase in Current Liabilities		
12. Increase in Other Liabilities		
13. Increase in Long-Term Debt:		
a. Due to or Guaranteed by SBA		
b. Due to Others		
14. Sale of Additional Partnership Interests		
15. Total Funds Provided		$
16. Total Funds Available		$
Funds Were Used for:		
17. Increase in Portfolio Securities		
18. Increases in Assets Acquired		
19. Increase in Operating Concerns Acquired		
20. Increase in Other Sucurities		
21. Increase in Current Assets (Excluding Cash and Invested Idle Funds)		
22. Increase in Other Assets		
23. Decrease in Current Liabilities (Excluding distributions to Partners)		
24. Decrease in Other Liabilities		
25. Decrease in Long-Term Debt:		
a. Due to or Guaranteed by SBA		
b. Due to Others		
26. Distributions to Partners		
27. Redemption of Partnership Interests		
28. Total Funds Used		
29. Ending Cash and Invested Idle Funds Position		$

NOTE.—Unrealized Gain (Loss) on Securities Held is not reflected in the above statement as it has no effect upon source or application of funds. All increases and decreases from the balance sheet in the above schedule are net after the deduction of non-cash items EXCEPT THE NON-CASH ITEMS ON LINE 3 ABOVE. *Furnish a shedule of non-cash items for each applicable category.*

I. Statement of Change in Financial Position for Partnership

The Statement of Change in Financial Position is to be inclusive of all changes in financial position resulting from transactions. However, the statement does not include changes in unrealized gains (loss) on securities held which are based on subjective determinations by the General Partner(s) and not based on transactions. The objectives of this statement are (1) to summarize the extent to which the licensee has generated cash and invested idle funds and (2) to complete the disclosure of changes in financial position during the period.

The following description by line item explains how the accounts on the Statement of Changes in Financial Position are developed.

Item 1, Beginning Cash and Invested Funds Position—The total of line item 14, Cash, and line item 15, Invested Idle Funds Assets, as reported on Form 468 at the end of the prior fiscal period.

Funds were Provided From:

Item 2, Net Investment Income (Loss)—Enter the amount shown on line 31 of the Statement of Operations Realized.

Item 3, Depreciation, Amortization, Provision for Loss on Receivables—Enter the total of amounts shown in line items 24 and 28 of the Statement of Operations Realized and the amount of account 672 included in Item 29 of the Statement of Operations Realized.

Item 4, Realized Gain (Loss) on Sale of Securities—Enter the amount shown on line 33 of the Statement of Operations Realized.

Item 5, Decrease in Portfolio Securities—Enter the amount of net change in Item 4, Cost column of the Statement of Financial Position if that amount is a decrease during the period. Do not include current maturities.

Item 6, Decrease in Assets Acquired—Enter the amount of net change in Item 7, Cost column of the Statement of Financial Position if the amount is a decrease during the period. Do not include current maturities.

Item 7, Decrease in Operating Concerns Acquired—Enter the amount of net change in Item 8, Cost column of the Statement of Financial Position if that amount is a decrease during the period. Do not include current maturities.

Item 8, Decrease in Other Securities—Enter the amount of net change in Item 9, Cost column of the Statement of Financial Position if that amount is a decrease during the period. Do not include current maturities.

Item 9, Decrease in Current Assets (Excluding Cash and Invested Idle Funds—Enter the amount of net change in Items 16 through 23 of the Statement of Financial Position if that amount is a decrease during the period.

Item 10, Decrease in Other Assets—Enter the amount of net change in Items 13, 24 and 25 of the Statement of Financial Position if that amount is a decrease during the period.

Item 11, Increase in Current Liabilities—Enter the amount of net change in Items 30 through 35 of the Statement of Financial Position if that amount is an increase during the period.

Item 12, Increase in Other Liabilities—Enter the amount of net change in Items 37, 38 and 39 of the Statement of Financial Position if that amount is an increase during the period. Do not include the amount of account 448.

Item 13(a), Due to or Guaranteed by SBA—Enter the amount of net change in Item 27 of the Statement of Financial Position if that amount is an increase during the period.

Item 13(b), Due Others—Enter the amount of net change in Item 28 of the Statement of Financial Position if that amount is an increase during the period.

Item 14, Sale of Additional Partnership Interests—Enter the amount of net change in Item 41 of the Statement of Financial Position if that amount is an increase during the period and the licensee is a partnership.

Item 15, Total Funds Provided—Enter the total of Items 2 through 14 of the Statement of Change in Financial Position.

Item 16, Total Funds Available—Enter the total of Items 1 and 15 of the Statement of Change in Financial Position.

Item 17, Increase in Portfolio Securities—Enter the amount of net change in Item 4 of the Cost column of the Statement of Financial Position if that amount is an increase during the period.

Item 18, Increase in Assets Acquired—Enter the amount of net change in Item 7, Cost column of the Statement of Financial Postion if that amount is an increase during the period.

Item 19, Increase in Operating Concerns Acquired—Enter the amount of net change in Item 8, Cost of the Statement of Financial Position if that amount is an increase during the period.

Item 20, Increase in Other Securities—Enter the amount of net change in Item 9, Cost column of the Statement of Financial Position if that amount is an increase during the period.

Item 21, Increase in Current Assets (Excluding Cash and Invested Idle Funds)—Enter the amount of net change in Items 16 through 23, of the Statement of Financial Position if that amount is an increase during the period.

Item 22, Increase in Other Assets—Enter the amount of net change in Items 13, 24

and 25 of the Statement of Financial Posi-
ion if that amount is an increase during the
eriod.

*Item 23, Decrease in Current Liabilities
Excluding Distributions to Partners)*—
nter the amount of net change in Items 30
hrough 33 and Item 35 of the Statement of
inancial Position if that amount is a de-
rease during the period.

Item 24, Decrease in Other Liabilities—
nter the net amount of change in Items 37,
8 and 39 of the Statement of Financial Po-
ition if that amount is a decrease during
he period. Do not include the amount of
ccount 448.

Item 25(a), Due or Guaranteed by SBA—
nter the net amount of change in Item 27
f the Statement of Financial Position if
hat amount is a decrease during the period.

Item 25(b), Due Others—Enter the net
mount of change in Item 28 of the Statement of Financial Position if that amount is a decrease during the period.

Item 26, Distribution to Partners—Enter the amount shown in accounts 365 through 369 of the Statement of Financial Position if that amount is a decrease during the period.

Item 27, Redemption of a Partnership Interests—Enter the amount of Item 41 of the Statement of Financial Position if that amount is a decrease during the period.

Item 28, Total Funds Used—Enter the sum of Items 17 through 27 of the Statement of Change in Financial Position.

Item 29, Ending Cash and Invested Idle Funds Position—Subtract Item 28 from Item 16. The balance will equal the sum of Items 14 plus 15 of the Statement of Financial Position.

(Use Only if Licensee is a Partnership)

censee: ....

censee No. ....

Statement of Unrealized Gain (Loss) on Securities Held for ______ Months Ended ______

	(1) Beginning balance	(2) Ending balance	(3) (2)-(1) Net changes
realized Appreciation:			
1. Portfolio Securities			
2. Assets Acquired in Liquidation of Portfolio Securities			
3. Operating Concerns Acquired			
4. Other Securities			
5. Total (Note 1)			
realized Depreciation:			
6. Portfolio Securities			
7. Assets Acquired in Liquidation of Portfolio Securities			
8. Operating Concerns Acquired			
9. Other Securities			
10. Total			
11. Unrealized Appreciation (Net of Depreciation) on Securities Held before fees to be paid on gains, if any			

Note 1) Disclose by footnote the following information: the amount of any potential fees that would be
on the amount shown on line 5 if the amount of unrealized appreciation were to be realized.

REALIZED LOSS EXPERIENCE ON RECEIVABLES, LOANS AND INVESTMENTS

[Dollars rounded to the nearest thousand]

Description	Current Year loss
es, Accounts and Accrued Interest Receivable	
ns	
t Securities	
ity Interests	
ts Acquired in Liquidation of Portfolio Securities	
rating Concerns Acquired	
er Securities	
Total	

J. Statement of Unrealized Gain (Loss) on Securities Held

This statement summarizes the results of the valuation process of securities held as of the statement date as compared to the previous statement date and discloses the net change in the Unrealized Gain (Loss) on Securities Held.

The types of securities held are the primary groupings of loans and investments as set forth in items 1 through 10 of the Statement of Financial Position and are (1) Portfolio Securities, (2) Assets Acquired in Liquidation of Portfolio Securities, (3) Operating concerns acquired and (4) other securities.

In arriving at net unrealized gain (loss) on securities held, consideration must be given to unrealized appreciation (valuation above cost) and unrealized depreciation (valuation below cost) of such securities. After adjusting the net unrealized appreciation (depreciation) for the appropriate tax effect, the remaining amount will represent unrealized gain (loss) on securities held.

Items 1 through 11 are without the estimated tax effect.

Item 1—the amount shown in column 3 Item 4 of the Statement of Financial Position.

Item 2—the amount shown in column 3 Item 7 of the Statement of Financial Position.

Item 3—the amount shown in column 3 Item 8 of the Statement of Financial Position.

Item 4—the amount shown in column 3 Item 9 of the Statement of Financial Position.

Item 5—the amount shown in column 3 Item 10 of the Statement of Financial Position.

Item 6—the amount shown in column 2 Item 4 of the Statement of Financial Position.

Item 7—the amount shown in column 2 Item 7 of the Statement of Financial Position.

Item 8—the amount shown in column 2 Item 8 of the Statement of Financial Position.

Item 9—the amount shown in column 2 Item 9 of the Statement of Financial Position.

Item 10—the amount shown in column 2 Item 10 of the Statement of Financial Position.

Item 11—Item 5 minus Item 10.

Realized Loss Experience on Receivables, Loans and Investments.

Furnish in this schedule by categories shown, the amount of loss experienced on loans and investments as well as receivables resulting from income realization. The loss experience will be the actual loss experience during the current period. The amounts shall be rounded to the nearest thousand.

This portion of statement is the basis for determining the loss experience of the industry.

Name of Licensee: ____________

License Number: ____________

STATEMENT OF COMMITMENTS AND GUARANTEES AS OF ____________

Description	Date made	Expiration date	Portfolio securities	Assets acquired	Operating concerns acquired
Commitments of funding					
Total					
Guarantees to others:					
Total					
Total commitments and guarantees outstanding					

L. *Statement of Commitments and Guarantees.*

This statement provides a schedule of outstanding commitments of the licensee to provide funds to small business concerns. It also shows by small business concern the amount of such concern's debt to a third party the licensee has guaranteed. Such amounts will be shown according to Portfolio Securities, Assets Acquired in Liquidation of Portfolio Securities, or operating concerns acquired.

The statement is completed as follows:

(a) Under Commitments of Funding, show the small business concern to whom the funds are committed. The amounts shown as commitments are derived from memorandum account CL-15.

(b) Under Guarantees to Others, show the name of the small business concern. The amounts shown as guarantees are derived from memorandum account CL-16.

SCHEDULE 1

Name of Licensee: ____________
License No. ____________
Small Business Concern (Issuer) Name ____________
Street Address ____________
City ____________
State ____________
ZIP Code ____________
SIC Code ____________
Report for the months ended ____________

SCHEDULE OF INVESTMENTS

[In Dollars Only—No Cents]

[Including Participations Purchased and After Deduction of Participations Sold]

Description of investment (1)	Loan debt equity (2)	Pub PubRes NonPub NPRes Vent SpPort (3)	DelPri DelInt D P&I (4)	Principal balance of financing at beginning of period (5)	Additions (deductions) during period (6)	Principal balance of financing at close of period (7)	Market, or fair value as determined by the board of directors (8)	Unrealized—appreciation/(depreciation) (9)

SCHEDULE OF INVESTMENTS—SCHEDULE 1

The Schedules of Investments will be pre-
ared to show each investment by the li-
ensee in each small business concern and
ndicate participations by the insertion of
P) immediately after the name of the in-
estment. A description of each column fol-
ows:

Column 1. Show each investment giving
he following details:

Loans: Date of Loan
Amount of Original Loan
Interest Rate
Maturity Date
Repayment Terms
Collateral
If regular repayments are scheduled give details.
Debt: Date of Initial Investment
Amount of Investment
Interest Rate
Maturity Date
Repayment Terms
Equity Features (Include percent of ownership or potential ownership)
Stock: Date of Initial Investment
Amount of Investment
Type of Investment—i.e. common, preferred, common with warrants/options
Percent of Ownership
Equity Interest of Unincorporated SBC
Date of Initial Investment
Amount of Involvement
Persent of Ownership
How Share of Profit (Loss) Determined
Warrants, Options and Other Rights
Date of Initial Investment or Acquisition
Cost (if any)
Percent of Ownership Represented
Additional Cost to Exercise

Column 2:

Opposite each investment the appropriate letter should appear

L—Loan
D—Debt Security
E—Equity

Column 3:

Opposite each investment the appropriate letter(s) should appear

P—Public Traded
PR—Public Traded Restricted
N—Non-public
NR—Non-public—Restricted
V—Venture Capital

SC—Special Discretionary Portfolio

Column 4:

Definition of Delinquency: Any investment that a payment of principal and/or interest is 60 or more days past due.

Opposite each investment the appopriate letter should appear

DP—Delinquent as to Principal

DI—Delinquent as to Interest

DPI—Delinquent as to Principal and Interest

If the small business concern is delinquent in one or more of the licensee's investments an identification number should be assigned to the investment for identification on schedule 2.

Details of delinquent investments should be shown on Schedule 2, Schedule of Delinquencies.

Column 5:

Principal Balance at Beginning of Period. Show balance at cost a beginning of fiscal period.

Column 6:

Additions (Deductions) During Period

Show change during fiscal period

Details of changes, except for regularly scheduled repayments of loans or debt should be explained by footnote

Column 7:

Principal Balance at Close of Period.

Show balance at close period.

Column 8:

Market of Fair Value as Determined by Board of Directors/General Partners.

Column 9:

Unrealized Appreciation (Depreciation)

Column 9 minus Column 8

The total of all investments in any small business concern appearing in column, 5, 6, 7, 8, and 9 should be shown, a line drawn and the investments in the next SBC shown.

SCHEDULE

Name of Licensee: ____________

LICENSE NO. ____________

Report for the ____ Months ended ____________

Schedule of Delinquencies

Small business concern name	Balance beginning of period	Balance end of period	Prin Int	Amount of delinquency at end of fiscal period	Date of last payment	No. of Pays Delq	Description of collateral	Fair Market value of collateral
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

SCHEDULE OF DELINQUENCIES—SCHEDULE 2

The schedule will give complete details of all investments reported as delinquent on Schedule 1, (Schedule of Investments, A separate line should be used to report an investment delinquent as to principal and interest in column 5, 6 and 7.

Column 1. Give name of small business concern.

Column 2. Give balance of investment at beginning of fiscal period.

Column 3. Give balance of investment at end of fiscal period.

Column 4. Insert P for principal and/or I for interest if investment is delinquent as to both principal and interest use separate lines in column 5, 6, and 7.

Column 5. Show the amount of delinquency at end of fiscal period.

Column 6. Show date of last payment.

Column 7. Show numbers of payments delinquent.

Column 8. If investment is collateralized describe collateral in sufficient detail for SBA to evaluate the fair market value of collateral.

Since various types of collateral may be offered, the amount of detail to be supplied should be what "any reasonable person" would require.

9. Show the fair market value of the collateral as determined by the Board of Director/General Manager.

If any delinquencies existing at the balance sheet date have been resolved prior to issuance of Form 468 that fact should be appropriately noted in column 9 and the details of the manner in which the delinquency was resolved disclosed by a footnote on Schedule 2 or a separate sheet attached to Schedule 2.

SCHEDULE 3.—SCHEDULE OF CHANGES IN OPERATING CONCERNS ACQUIRED

Name of SBC ....
Address .... Street Address .... City .... State

Description	Asset changes				Commitments and Guarantees	Total
	Loans	Debt securities	Equity**	Total		
1. Balance, Beginning of Period*						
2. Add: Cash Additions						
3. Non-cash Additions						
4. Total (Lines 2 and 3)						
5. *Less:* Cash Deductions						
6. Non-cash Deductions						
7. Total (Lines 5 and 6)						
8. Net Increase (Decrease) Line 4 minus 7)						
9. Balance End of Period (Line 1 plus 8 (at cost)						
10. *Less:* Unrealized Depreciation						
11. Lower of Cost or Value (Line 9 Minus 10)						
12. *Add:* Unrealized Appreciation						
13. Fair Value (Line 11 plus 12)						

*Balance at Beginning of Period is Net of Unearned Discounts, Fees, Etc.
**Give Details of Equity By Reference to Schedule 1.
If Investment Has Been Sold, Show By Footnote—Cost—Sales Price—Gain—Cash Received—Non Cash Receipts.

SCHEDULE OF CHANGES IN OPERATING CONCERNS ACQUIRED—SCHEDULE 3

A schedule 3 should be prepared for each small business concern acquired in which changes occured.

SCHEDULE 4

Name of Licensee ....
License Number ....
Participations (a) and Joint Financings as of
____________, 19____.

Name of small business concern	LDE	Original total amount of finacning (b)	Names of participating entities or those taking part in joint financing (identify intitating entity)	Reporting company's outstanding principal balance of			Description of collateral showing percent applicable to each party and any preference to collateral
				Participation purchased (b)	Participation sold (b)	Joint financing (b)	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

(a) A participation is defined as an undivided interest with one or more other lenders or investors in a note, debenture, certificate of stock, or other instrument evidencing a loan to, or equity financing of, a small business concern.
(b) Show participations in, or joint financings pertaining to, capital stock or warrants or options at cost.

PARTICIPATIONS AND JOINT FIANCINGS—SCHEDULE 4

This schedule needs to be completed only for addtions and changes that have occurred in the current year. It there has been no change in the participation since the last Annual Report Form 468 the participation should be indicated in Schedule I, Column 1 by the insertion of (P) immediately after name of the invetment.

Show in this schedule the financings in which the reporting licensee participated as well as financings made jointly by the reporting licensee and one or more other lenders or investors during the period or which were outstanding at any time during such period. Identify each item in column (1) name of th financed small business concern; indicate by appropriate letter in column (2) the type of financing (loan, debt security, stock, warrants, and options).

In column (3) show the original total amount contributed by all parties in the participation or joint financing. The name of such participating or joint financing entities (including the name of the reporting licensee) shall be shown in column (4) with appropriate indication as to which is the intitating (sponsoring) entity.

Show in column (5), (6), and (7), as appropriate, the reporting licensee's outstanding principal balance, or other cost, of participation purchased, participation sold, or joint financing, as of the close of the period covered in the report. Enter in column (8) a description of collateral pertaining to each financing, together with information as to the percentage applicable to each party and as to preferences agreed upon.

CASH AND INVESTED IDLE FUNDS—SCHEDULE 5

Cash will be reported on Schedule 5(a) and Invested Idle Funds will be reported on Schedule 5(b).

SCHEDULE 5—CASH

Name of Licensee .... License No. .... Date .... 19....

SCHEDULE 5A—CASH

Name of depository (1)	Location of depository (2)	Amount (3)
1. General funds-demand balances with:		
(a)		
(b)		
(c)		
(d)		
(e)		
(f)		
(g)		
2. Deposits in imprest accounts with:		
(a)		
(b)		
(c)		
(d)		
(e)		
(f)		
(g)		
3. Other investments in insured institutions:		
(a)		
(b)		
(c)		
(d)		
(e)		
(f)		
(g)		
4. Cash items in process of collection	XXX	
5. Petty cash	XXX	
6.		
7.		
8.		
9.		
10.		
11. Total Cash	XXX	

Identify compensating balances by a footnote.

CASH—SCHEDULE 5(A)

Show cash on hand and in general funds demand deposits; funds in imprest bank accounts. Demand deposits are balances subject to withdrawal without notice and shall be in commercial banks which are members of the Federal Deposit Insurance Corporation. Cash items in process of collection represent those cash items which have been placed with banks for collection. Petty cash shall represent the full amount of the petty cash imprest fund. The amount shown on line 11 should be the same amount reported on line 14 of the Statement of Financial Position.

SCHEDULE 5 B.—SCHEDULE OF INVESTED IDLE FUNDS

Name of License

License No. ....

Date ...., 19......................

SCHEDULE 5B-1.—U.S. GOVERNMENT OBLIGATIONS, DIRECT AND FULLY GUARANTEED

Name of issuer and title of issue (1)	Interest rate (2)	Call date (3)	Maturity date (4)	Principal at par (5)	Principal at cost (6)	Market value (7)
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10 Totals						

SCHEDULE 5B-2.—INSURED SAVINGS, AND TIME CERTIFICATES OF DEPOSIT

Name of Location of Depository				
Insured Savings (1)	Time Certificates of deposit (2)	Interest rate (3)	Insured savings balance (4)	Time certificates of deposit balance (5)
1.				
2.				
3.				
4.				
5.				
6.				
0.				
1.				
2.				
3.				
4.				
5.				
6.				
7. Totals				
Total Insured Savings and Time Cer-ificates of Deposit (column (4) plus olumn (5) item 17)				XXX
Total U.S. Government Obligations, nsured Savings, and Time Certifi-ates of Deposit (item 18 plus total olumn (6) Schedule 5(b)(1))				XXX

INVESTED IDLE FUNDS—SCHEDULE 5(B)

Show in Schedule 5(b)(1) securities owned which have been issued or guaranteed by the U.S. Government, showing the name of the issuer and the title of each issue. Other required data, such as interest rate, call date, maturity date, and principal amount at par of bonds and notes, may be obtained by inspection of the securities or from records of securities pledged. The cost of the securities shall be shown in column (6) and the current market value thereof in column (7).

Show in Schedule 5(b) funds invested in insured savings accounts and funds on time deposit evidenced by time certificates of deposit. Savings accounts shall be with institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation. Time deposits shall include all time certificates of deposit held by the company in commercial banks which are members of the Federal Deposit Insurance Corporation.

The amount shown in Schedule 5(b)(2) line 19 represents invested idle funds and should be the same amount as shown on line 15 of the Statement of Financial Position.

The amounts contained in this schedule can be obtained for the accounts as follows:

In Schedule 5(a), item 1 is based on accounts 100 through 108, item 2 is based on accounts 100 through 112, item 3 is based on account 118, and item 4 is based on account 120.

Schedule 5(b)(1) is based on account 130.

In Schedule 5(b)(2), columns 1 and 4 are based on accounts 131 through 134, and column 2 and 5 are based on accounts 135 through 137.

In Column 3 enter the rate of interest.

SCHEDULE 6

Name of Licensee ....

License No. ....

SCHEDULE OF AVERAGE CASH AND INVESTED IDLE FUNDS BALANCES ON A MONTHLY BASIS FOR FISCAL YEAR ENDED ______ AND DETERMINATION OF INACTIVITY

Month and Year	(1) Cash	+	(2) Idle Funds	=	(3) Total
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13. Totals					

14. Average Idle Funds (Line 13 column 3 ÷ 12) ....

15. Line 26 of statement of financial position value at cost ....

16. Twenty-five percent of Line 15 ....

17. Is Line 16 larger than 14? Yes ___ No ___

If Answer is Yes—Stop

If Answer is No—Continue

18. Twenty-five percent of Line 14

19. Amount of financing during the past 18 months ....

20. Is Line 19 larger than Line 18? Yes ___ No ___ ....

If Answer is Yes—Stop.

If Answer is No—Licensee is Inactive.

AVERAGE CASH AND INVESTED IDLE FUND BALANCES ON A MONTHLY BASIS—SCHEDULE 6

This schedule is designed to measure cash or cash items available for investment and is a basis for measuring the licensee's level of activity.

A monthly average is to be computed which fairly represents cash and invested idle funds available during the month. The average amount of cash available can usually be obtained from the licensee's bank statements. The average of invested idle funds is to be a "simple" average based on the number of days in the month and giving consideration to the liquidation value of such a short-term securities.

The schedule is to include the 12-month period prior to the statement date. Should there be cash or idle funds that are encumbered or restricted (compensating balances, pledged funds, etc.), such amounts will be eliminated.

The amounts contained in the schedule can be obtained from the accounts as follows:

Column 1, cash, is based on accounts 100 through 120.

Column 2, idle funds, is based on accounts 130 through 138.

It the computation as shown on Schedule 6 show the licensee to be inactive as defined by Regulation, licensee should attach a statement listing extenuating circumstances, if any exist.

SCHEDULE 7

(Use Only if Licensee is a Corporation)

Name of Licensee: ________________
License No.: ________________
As of ________________, 19____

SHAREHOLDERS, OFFICERS AND DIRECTORS OF THE LICENSEE

Name and address (1)	Officer, director, and manager give exact title (2)	Title of class (3)	Type of ownership (4)	Amount owned		
				Number of shares (5)	Total par or stated value (6)	Percent owned of class outstanding (7)
			X			
Totals by Class			X X			

SHAREHOLDERS, OFFICERS, AND DIRECTORS OF THE LICENSEE—SCHEDULE 7

Furnish in this schedule the information as required by the form regarding equity securities issued by the licensee and regarding the licensee's officers, directors and manager.

In column (1) list:

(a) Each person or company directly or indirectly owning, controlling, or holding with power to vote, 10 percent or more of the outstanding voting securities of the company.

(b) Each person or company owning of record or being known to own beneficially more than 10 percent of any other class of equity securities of the company.

(c) Each officer, director, or manager of the licensee. (List and identify officers and directors, and manager regardless of whether or not they own any equity securities of the company.)

Show in column (2) whether each natural person listed in column (1) is an officer, director, manager of the licensee or specific combination of any of the three and the total remuneration for the period received by each from the licensee. Column (3) shall show the title of each class of stock owned by any person or company and column (4) shall indicate whether the securities of the specific class are owned both of record and beneficially, of record only, or beneficially only.

In columns (5), (6), and (7), respectively, show the number of shares of each class owned by each listed person or company, the total par or stated value of such shares, and the percentage of the total number of shares of this class outstanding which is represented by the shares owned by the particular person or company.

Summarize the foregoing information by class of equity security at the bottom of the schedule.

SCHEDULE 7

(Use Only If Licensee Is a Partnership)

Name of Licensee:________________
License No.:________________
As of ________________, 19____

GENERAL PARTNERS, LIMITED PARTNERS AND ADVISORY DIRECTORS OF THE LICENSEE

Name and address	Officer, director, and manager* give exact title	General or limited partner	Type of ownership	Amount owned		Percent owned of class outstanding
				Percent of total partnership	Total dollar value	
(1)	(2)	(3)	(4)	(5)	(6)	(7)

*See Glossary for Definitions: Totals by class—General Partner X; Limited Partner X; Total X.

GENERAL PARTNERS, AND ALL CONTROL PERSONS WHETHER LIMITED PARTNER, ADVISORY DIRECTOR OR OTHER PERSON—SCHEDULE 7

Furnish in this schedule the information as required regarding the partnership interests of the licensee and licensees partners. The definitions of Director and Executive Officer should be reviewed to insure that the Schedule is complete.

In Column 1 list:

(a) each person or company directly or indirectly owning or controlling a 10 percent or more partnership interest.

(b) each officer, director or manager of the licensee whether or not they own any partnership interest.

Show in column 2 whether any person listed in column 1 is an officer, director, manager of the licensee or specific combination of any of the three and the total remuneration for the period received by each from the licensee.

Column 3 shall show the type of partnership interest (general or limited of each listed person.

Column 4 shall indicate whether the partnership interest is owned both of record and beneficially, of record only or beneficially only.

Column 5 will show the percent of total partnership interest owned.

Colunm 6 will show the total dollars of Partner's capital contribution.

Column 7 will show the percent owned of the total general partnership interest or the percent of the total limited partnership interests.

MANAGEMENT CERTIFICATION

The Annual Report for Fiscal Year Ended _______________, 19____ submitted by _______________ (Licensee) to the Small Business Administration, and consisting of the Audited Financial Statements specified in SBA Form 468 (except those statements listed below which have been omitted) are hereby certified to be correct.

Date: _______________

Chief Financial Officer: _______________

Title: _______________

Statements and Schedules Omitted:

____

____

VERIFICATION

I hereby attest that the minutes of the meeting of Board of Directors of ______ (Licensee) on ______, 19—, show that the Board at such meeting, reviewed and approved the Annual Report of such company for the Fiscal Year Ended ______, 19—, covered by the above certification of the chief financial officer.

Date _______________

Secretary _______________

Title 18, Sections 1001 and 1006 of the U.S. Code subjects to punishment by five and/or imprisonment any person who makes any oral or written statements, entry or representation to SBA, knowing it to be false, or willfully conceals a material fact, in a matter within SBA's jurisdiction or who with intent to defraud directly or indirectly shares any benefits derived from any act of an SBIC. Title 15, Section 645(a) subjects to punishment by fine and/or imprisonment any person making a false statement or willfully overvaluing security, for the purpose or obtaining for himself or another any loan, extension thereof, or the acceptance, release, or substitution of security therefore, or for the purpose of influencing in any way the action of SBA, or for the purpose of obtaining money or anything of value.

[51 FR 30752, Aug. 28, 1986]

APPENDIX II—CHART OF ACCOUNTS FOR SBICs

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I. INTRODUCTION

A. *Statement of Policy.* Small Business Investment Companies (SBICs) licensed by the Small Business Administration (SBA) including 301(d) licensees are to maintain their books of account in accordance with the system of account classification and accounting policies herein prescribed. Accounting principles and practices set forth herein are in accordance with generally accepted accounting principles for investment companies as set forth by the American Institute of Certified Public Accountants.

The system of account classification is adaptable to manual or machine accounting procedures employing the double-entry method of accounting, and is otherwise designed to meet the specific needs of companies licensed in accordance with the provisions of the Small Business Investment Act of 1958, as amended.

Nothing contained in this system of account classification can/or is intended to authorize or approve any operation or action by a licensee, or any other action, not authorized or approved by the Small Business Investment Act of 1958, as amended, or the Rules and Regulations promulgated thereunder.

This system of Account Classification was prepared by the SBA. Any inquiries or comments relating to the system should be directed to the Staff Accountant, Investment Division, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

B. *Purpose of the System.* This system has been prescribed to insure that standard books of account are maintained by licensees and that uniform accounting policies are followed. By design, the system is basic and may be expanded by a licensee if necessary.

C. *Maintenance and Retention of Records.* The licensee's books and records shall be maintained at its principal place of business. Books and records shall include its books of account, and other records, and memoranda which support the entries in its books of account. These supporting records shall be maintained in such manner as to be able readily to furnish information on any item included in any account. The books and records referred to herein include not only accounting records in a limited technical sense, but other records, such as minute books, capital stock records, reports, correspondence, and memoranda which may be useful in developing the history of, or facts regarding, any transaction.

Memorandum Accounts are included in the chart of accounts to facilitate record keeping of nominal assets, contingent liabilities, commitments to provide future financing (directly or through participations) and guarantees.

Section 107.1002 of SBA Rules and Regulations specifies the time period licensee's records are to be maintained.

II. ACCOUNTING POLICIES AND PRACTICES

As a general rule, accounting policies followed by licensees are those promulgated by the American Institute of CAP's as generally accepted accounting principles. Certain of these principles and practices are prescribed in the AICPA's Audit Guide for Investment Companies.

The significant accounting policies licensees are to follow are summarized below. The summary is intended to highlight the more important accounting policies and practices rather than being an all inclusive statement.

A. *Accrual Basis of Accounting.* Books of account shall be maintained on an accrual basis and, at the end of each month, transactions shall be posted to the General Ledger. Entering in the records and posting to the General Ledger of accruals applicable to each month is optional but all accruals are to be entered in the records and posted at the end of the fiscal year, and as of such other dates as mark the close of periods to be covered by interim or special financial reports required to be furnished to SBA.

B. *Accounting and Reporting Loans and Investments on the Value Basis.* Loans and investments will be recorded at cost. However, unrealized appreciation or depreciation of such securities will be recognized in the accounts and as such will result in fair value accounting for loans and investments.

The practice of valuing loans and investments and reflecting in the accounts the resulting unrealized gain (loss) on such securities held has been expressed by the American Institute of CPA's as being a generally accepted accounting practice for investment companies. Accordingly, this practice has been adopted for SBICs.

The adoption of this practice causes unrealized appreciation on loans and investments to be recognized in the accounts. Unrealized depreciation, essentially allowance for losses, has always been recognized. An appropriate tax provision will be established for net unrealized appreciation on securities held for all corporate SBICs. No provision for taxes is necessary for limited partnership SBICs.

C. *Equity Method of Accounting.* The carrying value of equity interests in unincorporated concerns will be determined by the equity method of accounting. However, for valuation purposes, the fair value of accounting will be used for the equity interest in unincorporated concerns.

The equity method of accounting will also apply to the investment in 301(d) licensees. Accordingly, an SBICs investment account will be adjusted for its proportionate share of net income (loss) of such investee as well as dividends paid by the investee. The result will be an investment carried at the book value of such stock.

Income reported on the equity method of accounting will be reported as a non-cash item of income.

D. 1. *Management Consulting Subsidiary for Corporate SBICs.* According to Section 107.501(c) of SBA Regulations, consolidated financial statements are to be submitted to SBA when a licensee has a management consulting subsidiary, books of account are to be maintained for the subsidiary so as to properly account for its financial position and result of operations. Such accounts should also be compatible with this system of accounts.

Consolidated statements will include only the licensee and the management consulting subsidiary. Other subsidiaries are not to be reported on a consolidated basis.

2. *Management Consulting Company Investment of Limited Partnership SBICs.* Limited partnership, legally and technically, do not have subsidiaries. A limited partnership SBIC may have an investment in a management consulting company. It is required that in such cases the limited partnership SBIC will own 100 percent of the stock of the management consulting company. The investment in the management consulting company will be accounted for on the records of the limited partnership by the equity method. A combined balance sheet and statement of operations for the limited partnership SBIC and the management consulting company will be filed with SBA in addition to the annual report on SBA Form 468 and supporting schedules required for the limited partnership SBIC.

E. *Tax Allocation Policy.* Tax allocation policies as set forth in Accounting Principles Board Opinion No. 11, *Accounting for Income Taxes,* effective December 31, 1967, will be followed by licensees in accounting for income taxes.

A difference between the amount of gain or loss recognized for tax purposes and that recognized for accounting purposes may constitute a timing difference to be accounted for according to APB Opinion No. 11.

Such differences will result in either deferred credits or deferred charges to future income taxes.

The licensee and its accountant should also follow the current amendments and/or clarifications or interpretations to APB 11 which include FASB 37, FASB Interpretation 29 and FASB Technical Bulletin 82-1.

FASB Interpretation 29 is not an amendment of APB 11.

FASB Technical Bulletin 82-1 is not an amendment it is a clarification on disclosure only.

F. *Accounting for Dividend and Interest Income.*— 1. *Dividend Income*—As a general rule, cash dividends on investment securities are recorded as of the ex-dividend date. Occasionally, cash distributions represent a return of capital; under these circumstances the distributions should be credited to the investment account rather than to income.

Stock splits and dividends in stock of the same class as that owned, are not recorded as income since the Licensee's equity interest in the company declaring the dividend or split has not changed.

Dividends in kind are generally recorded as non-cash income at the fair value of the property received. When the recipient Licensee has the option to receive cash or stock, income should be recorded for the amount of cash that could have been received. When stock rights are received, a portion of the cost basis of the related investment may be allocated to the rights on a pro rata cost basis.

2. *Interest Income*—Interest Income will be accrued according to terms of interest bearing loans and investments. Interest will not be accrued if the ability of the small business concern to pay such accrued interest is doubtful. Indicators of uncollectible accrued interest arise when the SBC is in bankruptcy, or on the verge thereof, or otherwise considered to be insolvent. Other indicators are when principal and/or interest payments are in default more then 6 months or when the Board of Directors

values the security below cost and considers collection to be doubtful.

Unearned premiums or discounts are an adjustment of interest income and are to be amortized over the stated life of the debt instrument on a ratable basis.

Interest on invested idle funds is usually accrued on a monthly basis.

G. *Profit Sharing.* As a general rule, profit sharing with the financed concern is an adjustment of the interest rate. An exception to this rule can arise when the licensee makes an investment in an unincorporated concern which takes the form of an equity interest rather than a loan, and the financed concern treats the profit sharing as an equity distribution rather than an expense.

H. *Financing Discounts and Fees.* Discounts on debt instruments resulting from financing made to small business concerns are considered an upward adjustment of the interest rate, and are to be amortized over the stated life of the instrument on a ratable basis. Accordingly, the discount is considered earned as it is amortized.

Fees as a general rule, are considered earned at the time of financing since they are for services rendered in connection with the financing. To the extent fees are for services to be rendered in the future, such amount will be considered unearned until the services are performed, at which time such fees will be considered earned.

I. *Realization of Gain (Loss) on Sale of Securities.* In accordance with the accrual basis of accounting, gain or loss on sale of securities or other assets of a licensee will be realized at the time of sale rather than at the time of collection. This practice assumes that the sale represents the final transaction, that the collectability of the gain is reasonably assured, and that the earnings process is complete, i.e., the licensee is not obligated to perform significant activities after the sale in order to earn the gain. Accordingly, this practice of recognizing gain s in accordance with generally accepted accounting principles.

Any transaction with recourse upon the liensee or involving any understanding, greement, option, privilege, or other rights o repurchase by and/or resell to the License may not be considered as a final transacion.

Any gain on sale of securities which does ot qualify as realized gain in accordance ith the foregoing shall be deferred pendng such realization.

When part of the net sales price is other han cash, gain will be realized at the time f sale unless the sale is not a final transacon or unless collection of the proceeds is ot reasonably assured. However, such nonash gains will be restricted in the sense hat they will be unavailable for capitalizaon or distribution until converted to cash. When collected, application of cash will first be made to the recovery of the licensee's cost of securities sold and then to gain. This is not the cost recovery method if the gain is recognized at the time of sale. It is a method of calculating gains available for distribution similar to the cost recovery method.

Losses are recognized at the point of sale and are shown as a reduction of undistributed net earnings realized. They have no effect on non-cash gains.

Cost of securities sold is usually the carrying value of such assets on the licensee's books. Occasionally, a licensee will acquire shares of an investee's stock (which shares are of the same class) at different times and prices. The average cost method of determining cost of such securities when sold is preferred. If a basis other than the average cost method is used, the difference (if material) in gain (loss) between that determined on the average cost method and that on the method actually used should be disclosed.

J. *Unrealized Gain (Loss) on Securities Held.* Unrealized gain (loss) on securities held results from the licensee's directors/general partner(s) valuation of Loans and Investments. Unrealized appreciation represents the valuation above cost and unrealized depreciation represents valuation below cost. After considering an appropriate provision for taxes, the net amount will be unrealized gain (loss) on securities held for corporate licensees. Limited partnership licensees will not have a provision for taxes.

The Statement of Operations measures the realized activities of a licensee that can be objectively measured. Unrealized gain (loss) on securities held is in many ways a subjective determination by a licensee: therefore, measurement in a separate statement would be most appropriate with the final results being reflected in the equity section of the Statement of Financial Position. Accordingly, unrealized gain (loss) on securities held will be measured separately in the equity accounts rather than being a measurement of earnings. Such accounting treatment is not at variance with Accounting Principles Board Opinion No. 9, *Reporting the Results of Operations,* issued by the AICPA and effective December 31, 1966, or with accounting practices set forth in the AICPA Audit Guide for Investment Companies as applied to SBICs.

K. *Undistributed Realized Earnings.* Undistributed realized earnings will encompass all realized earnings whether in cash or non-monetary receipts such as notes receivable, stock, etc. Earnings realized in other than cash will not be available for distribution or otherwise made available for capitalization until converted to cash. Gain or loss on securities held is unrealized and, therefore, not measured in undistributed earnings.

L. *Accounting for Non-Monetary Transactions.* Non-monetary transactions involve both reciprocal and non-reciprocal transfers of assets or liabilities not involving cash between the licensee and another entity or person, or between the licensee and its stockholders/partners. Accounting Principles Board Opinion No. 29, issued by the AICPA and effective October 1, 1973, should be followed by licensees to the extent applicable when accounting for non-monetary transactions.

M. *Loan and Investment Transactions.* Non-monetary exchanges with portfolio concerns or others whereby the licensee transfers certain securities or assets for other securities or assets will be considered transactions where gain (loss) is realized whether such transactions are taxable or non-taxable exchanges, when values are clearly determinable as required by paragraphs 18 and 20 of APB 29. In cases where the values are not clearly determinable the accounting basis for assets received will be the same basis as the assets transferred and unrealized gain (loss) will be the result of the valuation process.

N. *Dividends and Spin-offs.* Dividends in kind are nonreciprocal transfers of nonmonetary assets to owners and should be accounted for at fair value. Fair value is defined as being not less than the value as reported on the most recent SBA Form 468 and the gain will be reported as a non-cash gain.

Assume the following facts:

Licensee has an investment, Cost $100 Value $500, and wishes to distribute the asset to the shareholders. If this item is isolated from the remainder of the records the balance sheet would appear as follows:

The appropriate asset account	$100	
The appropriate appreciation account	400	
Account 440-Stockholders Unrealized Appreciation on Loans and Investments		$400
Account 451-Stockholders Undistributed Net Realized Earnings		100

At the time that a decision is made to distribute the asset, immediately prior to distribution the licensee will make the following journal entries:

1. Dr Account 440-Stockholders Unrealized Appreciation on Loans and Investments	$400	
Cr Account 450-Stockholders Non-cash Gains on Sale of Securities		$400

Explanation—The distribution of the asset is equivalent to a sale which results in a non-cash gain.

2. Dr The appropriate asset account	$400	
Cr The appropriate appreciation account		$400

Explanation: The appreciation of the asset has been now realized.

At the time of distribution the following entry would be made.

3. Dr Account 450-Stockholders' Non-cash Gains on Sales of Assets	$400	
Dr Account 451-Stockholders Net Realized Earnings	100	
Cr The appropriate asset account		$500

O. *Special Policies Applying to 301(d) Licensees.*—1. *Three percent non-voting Preferred Stock Purchased by SBA.* Although considered leverage funds, preferred stock purchased by SBA of a 301(d) licensee is treated like other equity securities for *accounting purposes.* Dividends on such stock receive the conventional treatment of dividends and are declared and paid out of "retained earnings". If arrearages of dividends exist on the preferred stock purchased by SBA, the balance sheet should indicate that a footnote should be read in conjunction with the preferred stock. The footnote should explain the amount of the arrearages and the number of arrearages. Dividends or other distributions may not be made if (a) Retained Earnings is a deficit or (b) there are any arrearages of dividends on preferred stock issued to SBA.

2. *Capitalized Operating Expenses.* Frequently, 301(d) licensees that have parent companies will be allowed to increase capital by transfers of allocated operating expenses incurred on the part of the licensee but paid for by the parent company. Another form of the same type of transaction exists when the parent company increases private capital of a subsidiary licensee by a cash transfer in which funds are designed to be used for budgeted operating expenses.

Such transfers will be deferred (account No. 383) expenses rather than assets on the basis that they have no future value.

P. *Allowance for Losses on Loans and Investments.* The value basis of accounting does not contemplate a general allowance for losses on loans and investments as does the cost basis. Rather, value accounting requires the licensee's Board of Directors/ General Partner(s) to value each loan or investment as of the statement date. When value is determined to be less than cost, unrealized depreciation will result. The Unrealized Depreciation, which is the SBIC's good faith valuation of certain investments below cost, is the amount that should be shown as an "Allowance for Losses on Loans and Investments" in the Computation of Earnings Available for Dividend Declaration or Capitalization. The total amount shown on Line Item 10, Column 2, of the Statement of Financial Position should, under normal conditions, be the amount of the "Allowance for Losses." Any material difference between the amount reported on Line 10, Column 2 of the Statement of Financial Position and the amount reported as the Allowance for Losses on Loans and Investments in the Computation of Earnings Available for Dividend Declaration or Capitalization should be explained by a footnote(s). It should be noted, however, that the adoption of value accounting will have no effect on the licensee's reserve for losses for tax purposes (see I.R.C.)

III. CHART OF ACCOUNTS

A. *Account Numbering System.* This system provides for two-digit number designations for major categories under which accounts are listed, and three-digit number designations for individual general ledger accounts. The first two digits of an individual account number refer to the major category under which the account is classified and the third digit identifies the specific account. Digits from zero through nine are use to identify specific accounts; the first deposit bank account established will be designed "100" and the second "101." It will be noted that some categories encompass individual accounts in sufficient number to require assignment of more than one two-digit number to identify the category. For example, "Cash on Hand and in Banks" has been assigned category numbers "10," "11," and "12."

B. *Additional Accounts.* Licensees may incorporate such additional accounts into their accounting system as are considered necessary.

Any account may be subdivided provided that such subaccounts do not impair the integrity of the accounts set forth in the prescribed system. Subaccounts shall refer by number and title to the accounts to which they apply. Use of a decimal system is required for extending the account numbers to identify such subaccounts.

C. *Primary Classification of Accounts.* The primary classification of accounts is as follows:

Account No	Description
General Ledger	
100 to 299	Asset and valuation accounts.
300 to 399	Liability accounts.
400 to 499	Capital accounts.
500 to 599	Income accounts.
600 to 699	Expense accounts.
Memorandum Records	
NA-10 to NA-14	Nominal assets.
CL-15 to Cl-17	Contingent liabilities.
OCS-1	Options on company's stock.
AL-1	Actual (realized) losses.
WI	Worthless investments—written off.
PDA	Preferred dividend arrearages on preferred stock sold SBA.

D. *Detail Chart of Accounts.* The detail chart of accounts is organized according to the primary classification of accounts and identifies the account number and title of each account. The page where a description of the account can be found is indicated at the right of the account title.

ASSET AND VALUATION ACCOUNTS

10-12—Cash on Hand and in Banks

100-108—Deposits in ________ bank.

110-112—Deposits in imprest account in ________ bank.

118—Cash items in process of collection.

120—Petty cash fund.

13—Invested Idle Funds

130—U.S. Government obligations, direct and fully guaranteed.

131—Insured savings accounts.

135-137—Time certificates of deposit in ________ bank.

138—Other investments in insured institutions.

14—Receivables

140—Notes receivable.

141—Accounts receivable.

142—Allowance for uncollectible notes and accounts receivable.

143—Accrued interest receivable.

144—Allowances for uncollectible interest receivable.

145—Dividends receivable.

146—Receivables from parent.

15—Current Maturities and Other Current Assets

150—Current maturities on portfolio securities.

152—Current maturities on assets acquired in liquidation of portfolio securities.

153—Current maturities on operating concerns acquired.

154—Current maturities on other securities.

156—Other current assets.

16—Investment in 301(d) Licensee

160—Investment in 301(d) licensee.

17—Loans to Small Business Concerns

170—Loans.

171—Appreciation of loan values.

172—Depreciation of loan values.

173—Unearned discount, fees, and other charges on loans.

18—Debt Securities of Small Business Concerns

180—Debt securities, convertible, and with stock purchase warrants or options.

184—Debt securities divested of stock rights.

186—Appreciation of debt securities values.

187—Depreciation of debt securities values.

188—Unearned discount, fees, and other charges on debt securities.

19—Equity Interests of SBCs

190—Capital stock of SBCs, with stock purchase warrants or options, and/or convertible.

191—Capital stock of SBCs—other.

192—Appreciation of capital stock values.

193—Depreciation of capital stock values.

194—Equity interests of unincorporated concerns.

195—Appreciation of equity interests in unincorporated concerns.

196—Depreciation of equity interests in unincorporated concerns.

197—Warrants, options, and other stock rights acquired from SBCs.

198—Appreciation of warrants, options, and other stock rights acquired from SBCs.

199—Depreciation of warrants, options, and other stock rights acquired from SBCs.

20—Assets Acquired in Liquidation of Portfolio Securities

200—Receivables from debtors on sale of assets acquired in liquidation of portfolio securities.

203—Depreciation in values of receivables from debtors on sale of assets acquired in liquidation of portfolio securities.

204—Assets acquired in liquidation of portfolio securities.

205—Appreciation of assets acquired in liquidation of portfolio securities.

206—Depreciation of assets acquired in liquidation of portfolio securities.

21—Operating Concerns Acquired

210—Operating concerns acquired.

211—Appreciation of operating concerns acquired.

212—Depreciation of operating concerns acquired.

22—Other Securities

220—Notes and other securities received on sale of portfolio securities.

221—Other securities received.

222—Appreciation of other securities.

223—Depreciation of other securities.

23—Prepaid Expenses and Deferred Charges

230—Prepaid expenses.

231—Deferred charges.

24—Furniture and Equipment

240—Furniture and equipment.

241—Accumulated depreciation on furniture and equipment.

25—Corporate Premises Owned

250—Corporate premises owned.

251—Accumulated depreciation on corporate premises owned.

252—Leasehold improvements.

26—Other Assets

265—Amounts due from directors, officers, general partners, limited partners and employees.

266—Organization costs.

267—Funds in escrow.

269—Other assets.

LIABILITY ACCOUNTS

30—Notes and Other Obligations Payable to SBA for Funds Borrowed

300—Notes payable to SBA.

301—Debentures payable issued to SBA.

31—Notes and Other Obligations Payable to Other than SBA for Funds Borrowed

310—Notes payable to other than SBA—guaranteed by SBA.

311—Notes payable to other than SBA—not guaranteed by SBA.

312—Mortgages payable for funds borrowed.

313—Mortgages payable on assets acquired in liquidation of portfolio securities.

32—Notes Payable—Other

320—Notes payable—other.

33—Current Maturities of Long-Term Debt

330—Current maturities of notes and debentures payable to or guaranteed by SBA.

331—Current maturities of notes and debentures payable to others not guaranteed by SBA.

34—Accounts Payable

340—Accounts payable.

341—Accounts payable due parent or partners.

35—Accrued Expenses and other current Liabilities

350—Accrued interest payable.

351—Accrued taxes.

354—Estimated income taxes accrued.

358—Other current liabilities.

36—Dividends a[illegible]tributions Payable

360-364—Divid[illegible] payable on ________ (type [illegible] class) capital stock.

365-369—Distributions payable to general and limited partners.

37—Trust Receipts

370—Employee taxes withheld.

374—Unapplied receipts.

378—Miscellaneous trust receipts.

38—Deferred Credits

380—Deferred credit to future income taxes.

383—Other deferred credits.

39—Other Liabilities

390—Other liabilities.

Capital Accounts

40-41—Capital Stock

400-404—________ (type and class) capital stock authorized.

405-409—________ (type and class) unissued capital stock.

410-411—________ (type and class) capital stock subscribed.

413-414—Capital stock subscriptions receivable ________ (type and class).

415-419—Treasury stock ________ (type and class).

42—Paid-in Surplus

420—Paid-in surplus.

43—3 Percent Preferred Stock [301(d) Licensees only]

430-3 percent preferred stock, cumulative, non-voting issued to SBA.

44—Stockholders' Unrealized Gain (Loss) on Securities Held

440—Stockholders' unrealized appreciation on loans and investments.

445—Stockholders' unrealized depreciation on loans and investments.

448—Stockholders' estimated taxes on net unrealized gain (loss) on securities held.

45—Stockholders' Undistributed Realized Earnings

450—Stockholders' non-cash gains on sale of securities.

451—Stockholders' undistributed net realized earnings.

46—Stockholders' and Partners Profit and Loss Clearing

460—Stockholders' profit and loss summary.

461—Stockholders' realized gain and loss summary in cash.

462—Stockholders' non-cash realized gain summary.

463—Stockholders' non-cash income from investments reported on the equity method of accounting.

465—Partners' profit and loss summary.

466—Partners' realized gain and loss summary in cash.

467—Partners' non-cash realized gain summary.

468—Partners' non-cash income from investments reported on the equity method of accounting.

47—Partners' Capital Contributions

470—General Partners' Permanent Capital Contribution Summary.

471—Corporate General Partners' Permanent Capital Contribution.

472—Individual General Partners' Permanent Capital Contribution.

475—Limited Partners' Permanent Capital Contribution Summary.

476—Limited Partners' Permanent Capital Contribution.

48—Partners' Unrealized Gain (Loss) on Securities Held

481—Corporate General Patners' Unrealized Appreciation on loans and investments.

482—Individual General Partners' Unrealized Appreciation on loans and investments.

483—Corporate General Partners' Depreciation on loans and investments.

484—Individual General Partners' Depreciation on loans and investments.

485—Limited Partners' Unrealized Appreciation on loans and investments.

486—Limited Partners' Unrealized Depreciation on loans and investments.

49—Partners' Undistributed Realized Earnings

491—Corporate General Partners' non-cash gains.

492—Individual General Partners' non-cash gains.

493—Corporate General Partners' undistributed net realized earnings.

494—Individual General Partners' undistributed net realized earnings.

495—Limited Partners' non-cash gains.

496—Limited Partners' Undistributed net realized earnings.

Income Accounts

50—Commitment Income

500—Commitment Income.

51-52—Interest Income

510—Interest on invested idle funds.

512—Interest on loans.

516—Interest on debt securities.

520—Interest income—other.

53—Fee Income

532—Management service fees.

534—Investigation and service fees charged other lenders.

536—Application and appraisal fees.

54—Dividends and Other Earnings

540—Dividends on capital stock of SBCs.

541—Sharings in income or revenue of SBCs.

542—Non-cash income from investments reported on the "Equity Method of Accounting."

57—Gain on Securities and Other Assets

570—Gain on U.S. Government securities.

571—Gain on loans.

572—Gain on debt securities.

574—Gain on capital stock of SBCs.

575—Gain on equity interests of unincorporated SBCs.

576—Gain on warrants, options, and other stock rights acquired from SBCs.

577—Gain on assets acquired in liquidation of portfolio securities.

578—Gain on operating concerns acquired

579—Gain on other assets.

58—Miscellaneous Income

582—Income from assets acquired in liquidation of portfolio securities.

584—Other income.

Expense Accounts

60—Commitment Expense

600—Commitment expense.

61-62—Interest Expense

610—Interest on obligations payable to SBA.

622—Interest on obligations payable to other than SBA.

64—Stock Record and Other Financial Expenses

642—Stock record and other financial expenses.

65-67—Operating Expenses

650—Advertising and promotional costs.

651—Appraisal and investigation costs.

652—Auditing and examination costs.

653—Communications.

654—Cost of space occupied.

655—Depreciation of corporate premises owned, furniture, and equipment.

656—Amortization of leasehold improvements.

657—Directors' and stockholders' and partners' meetings costs.

658—Insurance.

659—Management services fees.

660—Investment adviser costs.

661—Legal services.

663—Salaries.

664—Taxes, excluding income taxes.

665—Travel.

670—Employee benefits expense.

672—Amortization of organization expense.

679—Miscellaneous operating expenses.

68—Estimated Losses on Receivables

680—Estimated losses on receivables.

70—Loss on Securities and Other Assets

700—Losss on U.S. Government securities.

701—Loss on loans.

702—Loss on debt securities.

704—Loss on capital stock of SBCs.

705—Loss on equity interests of unincorporated concerns.

706—Loss on warrants, options, and other stock rights acquired from SBCs.

707—Loss on assets acquired in liquidation of portfolio securities.

708—Loss on operating concerns acquired.

709—Loss on other assets.

71—Miscellaneous Expenses

710—Expense on assets acquired in liquidation of portfolio securities.

715—Other Expenses

72—Income Taxes

720—Income taxes—net income.

722—Income taxes—net realized gain on investments.

Memorandum Records

Nominal Assets

NA-10—Stock purchase warrants or options on stock of SBCs.

Contingent Liabilities

CL-15—Commitments outstanding.

CL-16—Guarantees outstanding.

CL-17—Other contingent liabilities.

Options on Company's Stock

OCS-1—Options on company's stock.

Actual Loss Experience

AL 1—Actual (realized) losses.

Worthless Investments

WI-1—Worthless investments written off.

Preferred Dividend Arrearages

PDA-1—Preferred dividend arrearages on eferred stock sold to SBA.

IV—DESCRIPTION OF ACCOUNTS

ASSET AND VALUATION ACCOUNTS

100-108—Deposits in ———— bank.

These accounts will represent funds on emand deposit in banks which are mem- ers of the Federal Deposit Insurance Cor- oration.

Debit:

(a) With amount of funds deposited.

Credit:

(a) With amount of funds withdrawn, and harges made by bank for such items as dis- ionored checks, transfer of funds by wire, ollection, exchange, etc.

110-112—Deposits in imprest account in ———— bank.

These accounts will represent funds on lemand deposit in imprest bank accounts to be drawn upon for the payment of operating expenses and to be reimbursed periodically through deposit therein of a check requiring dual signatures and drawn on the company's general funds bank account.

Debit:

(a) With amount of funds deposited.

Credit:

(a) With amount of funds withdrawn.

118—Cash items in process of collection

This account will represent the amount of cash items placed with banks for collection.

Debit:

(a) With amount of such items placed with banks for collection.

Credit:

(a) With amount of items collected.

(b) With amount of uncollected items returned or withdrawn.

120—Petty cash fund

This account will represent the imprest petty cash fund maintained for the purpose of making small disbursements.

Debit:

(a) With amount placed in the fund when established.

(b) With amount of increase in the fund.

Credit:

(a) With amount of decrease in the fund.

NOTE: The petty cash fund may be reimbursed and expenditures recorded as often as circumstances require, but must be reimbursed at the close of the company's fiscal year. Checks to replenish the fund will be drawn on a general fund bank account and include "petty cash" as a payee. Debits totaling the amount of this replenishment should be made concurrently to the appropriate accounts.

130—United States Government obligations, direct and fully guaranteed

This account will represent the cost of temporary investments made from general cash funds in direct obligations of the United States Government and obligations guaranteed as to principal and interest by the United States Government. When United States Government Savings Bonds redeemable at par value on maturity are purchased at less than face value, the increase in redemption value may be periodically charged to this account with concurrent credit to account No. 510—Interest on invested idle funds.

Debit:

(a) With cost of such securities acquired.

(b) With increase in redemption value of United States Savings Bonds.

Credit:

(a) With redemption value of United States Savings Bonds redeemed.

(b) With cost of such securities sold or disposed of otherwise.

NOTE: Increase in value over cost of United States Treasury Bills, which are issued at a discount and are noninterest bearing, will not be reflected in this account but will be debited to account No. 143—Accrued interest receivable, with concurrent credit to account No. 510—Interest on invested idle funds.

(See account Nos. 570 and 700.)

131—Insured savings accounts

This account will include the balances in subaccount Nos. 131.1, 131.2, etc.

131.1—Insured savings in ————

This account will represent funds invested in an insured savings account (up to the amount of the insurance) in an institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation.

Debit:

(a) With amount of funds invested.

(b) With amount of interest earned on such invested funds.

Credit:

(a) With amount of funds withdrawn.

135-137—Time certificates of deposit in ———— bank.

These accounts will represent funds in Time Certificates of Deposit, maturing not later than one year after issuance, in banks which are members of the Federal Deposit Insurance Corporation.

Debit:

(a) With amount of funds deposited.

Credit:

(a) With amount of funds withdrawn.

138—Other investments in insured institutions

This account will represent funds deposited or invested in insured institutions that can not be classified in any of the prior categories.

Debit:

(a) With the amount of funds deposited or invested.

Credit:

(a) With the amount of funds withdrawn.

140—Notes receivables

This account will represent the unpaid balance of miscellaneous notes receivable, such as notes for management consulting services. Notes representing amounts due from debtors on sale of assets acquired in liquidation of portfolio securities will be reflected in account No. 200.

Debit:

(a) With amount of such miscellaneous notes received.

Credit:

(a) With amount collected on principal of such miscellaneous notes.

(b) With unpaid principal balance written off or disposed of otherwise.

NOTE: Recording as income of amounts entered in this account should be discontinued with respect to any small business concern which is in bankruptcy, or on the verge thereof, or otherwise considered to be insolvent. The amounts in question should be credited as deferred income in account No. 383—other deferred credits, pending determination of the appropriate accounting. In less serious situations, when the debtor small business concern is in default more than 6 months to the licensee, or the fair value of its debt or equity instruments held by the company, as determined by the Board of Directors/General Partner(s), is less than cost, or recovery thereon is doubtful, an addition to the allowance for uncollectible notes and accounts receivable should be made in an amount equivalent to the receivable entered in this account, or, as an alternative, the receivable recorded as an asset should be concurrently credited as deferred income to account No. 383 as above indicated.

(See account No. 142.)

141—Accounts receivable

This account will represent the amount due on open account for management consulting, appraisal, and miscellaneous services rendered; and miscellaneous current receivables.

The account also will include the amount of accrued compensation receivable for services rendered to "participating" companies and the amount of accrued commitment fees receivable for making funds available on a deferred basis to small business concerns and to "initiating" companies in connection with the latter's financing of small business concerns.

Accounts receivable representing receivables due from debtors on sale of assets acquired in liquidation of portfolio securities will be reflected in account No. 200.

Debit:

(a) With amount due the company.

Credit:

(a) With amount collected.

(b) With amount written off or disposed of otherwise.

NOTE: Recording as income of amounts entered in this account should be discontinued with respect to any small business concern which is in bankruptcy, or on the verge thereof, or otherwise considered to be insolvent. The amounts in question should be credited as deferred income in account No. 383—Other deferred credits, pending determination on the appropriate accounting. In less serious situations, when the debtor small business concern is in default more than 6 months to the licensee, or the fair value of its debt or equity instruments held by the company, as determined by the Board of Directors/General Partner(s), is less than cost, or recovery thereon is doubtful, an addition to the allowance for uncollectible notes and accounts receivable should be made in an amount equivalent to the receivable entered in this account, or, as an alternative, the receivable recorded as an asset should be concurrently credited as deferred income to account No. 383 as above indicated.

(See account No. 142.)

142—Allowance for uncollectible notes and accounts receivable

This account will represent the valuation reserve provided for estimated losses on notes and accounts receivable and should be maintained in an amount not less than a conservative estimate of probable losses. This valuation reserve will be adjusted as occasion demands, so that this account will reflect the best available estimate or probable losses on notes and accounts receivable.

Debit:

(a) With amount of decreases in such reserve.

(b) With amount of notes and accounts receivable written off.

Credit:

(a) With amount of such reserve established.

(b) With amount of increases in such reserve.

(c) With amount of recoveries on notes and accounts receivable written off.

NOTE: When a note receivable or an account receivable is recorded with respect to any debtor small business is in default more than 6 months to the licensee, or the fair value of whose debt or equity instruments held by the company, as determined by the Board of Directors/General Partner(s), is less than cost, or recovery thereon is doubtful, an addition to the allowance for uncollectible notes and accounts receivable reflected in this account should be made in an amount equivalent to the recorded receivable, or, as an alternative, the amount of the receivable recorded as an asset should be concurrently credited as deferred income in account No. 383—Other deferred credits, pending determination of the appropriate accounting.

(See account Nos. 140, 141 and 680.)

143—Accrued interest receivable

This account will represent the amount of interest accrued on portfolio loans to and debt securities of small business concerns, United States Government obligations, direct and fully guaranteed, notes receivable, sales contracts, and other interest-bearing amounts due from debtors, including funds placed in escrow pending the closing of financing and assets acquired in liquidation of portfolio securities as well as interest accrued on other securities.

Debit:

(a) With amount of interest accrued on all items covered by this account.

Credit:

(a) With amount of interest payments received.

(b) With amount of accrued interest transferred to assets acquired in liquidation of loans and debt securities.

(c) Upon disposition of interest-bearing obligations, with amount of accrued interest thereon included in this account.

(d) With amount of accrued interest written off or disposed of otherwise.

NOTE 1.—At the option of the company, interest payments received in cash from debtors prior to the interest maturity date may be credited to account No. 374—Unapplied receipts, until the maturity date.

NOTE 2.—Accrual of interest receivable should be discontinued with respect to any loan or debt security financing a small business concern which is in bankruptcy, or on the verge thereof, or otherwise considered to be insolvent. Any interest payments received from such a debtor should not be treated as interest income, but should be either credited as payments on principal of the debt or credited as deferred income in account No. 383—Other deferred credits, pending determination of the appropriate accounting. In less serious situations, when interest receivable is accrued under circumstances in which the financed small business concern is in default to the licensee; or the fair value of the loan or debt security as determined in good faith by the Board of Directors/General Partners is less than cost, or recovery thereon is doubtful, an addition to the allowance for uncollectible interest receivable should be made in an amount equivalent to the accrual of interest receivable, or, as an alternative, the interest income should be deferred in account No. 383 as above indicated.

(See account No. 144.)

144—Allowance for uncollectible interest receivable

This account will represent the valuation reserve provided for estimated losses of accrued interest receivable, and should be maintained in an amount not less than a conservative estimate of probable losses. This valuation reserve will be adjusted as occasion demands, so that this account will reflect the best available estimate of probable losses of accrued interest receivable.

Debit:

(a) With amount of decreases in such reserve.

(b) With amount of accrued interest receivable written off.

Credit:

(a) With amount of increases in such reserve established.

(b) With amount of increases in such reserve.

(c) With amount of recoveries of accrued interest receivable written off.

NOTE: When interest receivable is accrued under circumstances in which the financed small business concern is in default over six months to the licensee, or the fair value of the loan or debt security as determined in good faith by the Board of Directors/General Partner(s) is less than cost, or recovery thereon is doubtful, an addition to the allowance for uncollectible interest receivable reflected in this account should be made in an amount equivalent to the accrual of interest receivable, or, as an alternative, the interest income should be deferred in account No. 383—Other deferred credits, pending determination of the appropriate accounting.

(See account Nos. 143 and 680.)

145—Dividends receivable

This account will represent cash dividends that have been declared on capital stock of small business concerns but have not been distributed to stockholders.

Debit:

(a) With amount due the licensee of cash dividend declared.

Credit:

(a) With amount distributed to the licensee of the dividend declared.

(See account No. 540.)

NOTE 1.—Stock splits or dividends in stock of the same class as that owned are not recorded as dividend receivable or income because the licensee's equity interest in the company declaring the dividend or split has not changed.

Therefore, stock splits or dividends will be measured in the appropriate investment account.

(Account Nos. 190 or 191.)

NOTE 2.—Dividends in kind will be recorded as income at the fair market value of the securities received and will be recorded in account No. 221, Other securities received.

146—Receivables from parent

This account will represent receivables due licensee from its parent. Receivables due from parent will generally be from one of two sources: (1) Expenses shared pro-rata with the parent paid by the licensee, but not yet reimbursed by the parent and/or (2) licensee has a tax loss from which the parent (and/or consolidated group) have received a tax benefit.

Debit:

(a) Parent's share of any expense shared with the licensee which was paid by the licensee.

(b) Licensee's share of any tax benefit derived by the parent from the filing of a consolidated tax return when the licensee has a taxable loss.

(c) Any other receivable due from parent arising from any other source.

Credit:

(a) Cash received from parent.

(b) Income taxes due from licensee but paid by the parent.

NOTE: The credit for income taxes due from licensee but paid by the parent can only arise in the case of a prior benefit being derived by the parent.

If the licensee has had a previous tax benefit by reason of a tax loss from some other member of the consolidated group the credit would be to account No. 341—Accounts payable due parent.

150—Current maturities of portfolio securities

The account will represent the principal amounts due the licensee on a cost basis of loans and debt securities of small business concerns that are reasonably expected to be collected in the normal course of business in the next 12 months of operations.

Debit:

(a) With amount due the licensee during the current year.

Credit:

(a) With amount of current maturities collected by the licensee.

(b) With amount not considered collectible on a current basis and restored to loan or debt security accounts.

(See account Nos. 170, 180, and 184.)

152—Current maturities on assets acquired in liquidation of portfolio securities

This account will represent the current principal amounts due the licensee on a cost basis of amounts due from debtors on sale of assets acquired; or the current principal amounts of their debt instruments that are classified as assets acquired in liquidation of portfolio securities.

This account will represent only those amounts reasonably expected to be collected in the normal course of business in the next 12 months of operations.

Debit:

(a) With amount due the licensee during the current year.

Credit:

(a) With amount of current maturities collected by the licensee.

(b) With amount not considered collectible on a current basis and restored to the appropriate asset acquired in liquidation of portfolio securities account.

(See account Nos. 200, 204.)

153—Current maturities on operating concerns acquired

This account will represent the principal amounts due the licensee on a cost basis of debt instruments classified as operating concerns acquired that are reasonably expected to be collected in the normal course of business in the next 12 months of operations.

Debit:

(a) With amount due the licensee during the current year.

Credit:

(a) With amount of current maturities collected by the licensee.

(b) With amount not considered collectible on a current basis and restored to other securities accounts.

(See account No. 210.)

154—Current maturities on other securities

This account will represent the principal amounts due the licensee on a cost basis of debt instruments classified as "other securities" that are reasonably expected to be collected in the normal course of business in the next 12 months of operations.

Debit:

(a) With amount due the licensee during the current year.

Credit:

(a) With amount of current maturities collected by the licensee.

(b) With amount not considered collectible on a current basis and restored to other securities accounts.

(See accounts Nos. 220 and 221.)

156—Other current assets

This account will represent current assets not otherwise classified of the licensee that are expected to be converted to cash or expensed in the normal course of business in the next twelve months.

Debit:

(a) With amount of such asset.

Credit:

(a) With amount collected.

(b) With the proportionate amount allocated to the period as an expense.

160—Investment in 301(d) licensee

This account will represent the licensee's investment in capital stock of a special purpose SBIC. The account will be maintained on the equity method of accounting basis and will show licensee's investment after considering proportionate share of realized income (loss) of the 301(d) licensee's operations and dividends declared by the 301(d) licensee.

Debit:

(a) With cost of capital stock of such 301(d) licensee.

(b) With the licensee's proportionate share of the 301(d) licensees:

(1) Net investment income, and

(2) Net realized gain on the sale of securities.

Credit:

(a) With the licensee's proportionate share of:

(1) Net investment loss.

(2) Net realized loss on sale of securities.

(b) With the licensee's proportionate hare of cash dividends or dividends in kind t fair value.

(c) With the value on equity basis of stock n 301(d) licensee when sold.

170—Loans

This account will represent the unpaid rincipal balance of loans made to small usiness concerns pursuant to Section 305 f the Small Business Investment Act of 958, as amended.

Debit:

(a) With face amount of direct loans.

(b) With portion retained by company of oans in which participations are sold to thers.

(c) With amount of participations in loans f others.

(d) With unpaid principal of loans repre- nted by renewal notes accepted or notes ken in substitution for those held.

(e) With reversal of prior credits when checks received representing repayments are dishonored, etc.

Credit:

(a) With amount collected on face amount of direct loans.

(b) With company's share of amount collected on principal of loans in which participations are sold to others.

(c) With amount by which participations in loans of others are reduced by repayments transmitted by the "initiating" company.

(d) With unpaid principal of loans represented by notes renewed or for which other notes have been substituted.

(e) With amount transferred to assets acquired in liquidation of portfolio securities.

(f) With unpaid principal of loans written off or disposed of otherwise.

NOTE 1.—A participation is defined as an undivided interest shared with one or more other lenders or investors in a note, debenture, certificate of stock, or other instrument evidencing a loan to, or equity financing of, a small business concern.

NOTE 2.—It is assumed that in all loan participation arrangements the "initiating" company will service the loans.

NOTE 3.—It is recommended that individual loan ledger cards or sheets be maintained for all loans. Such ledger cards or sheets should contain the detailed information needed for account No. 173—Unearned discount, fees, and other charges on loans.

(See account Nos. 171 and 172.)

171—Appreciation of loan values

This account will represent the amount by which the licensee's Board of Directors/General Partner(s) has valued loans about cost.

Debit:

(a) With amount of such appreciation recognized.

(b) With amount of increases in such appreciation recognized.

Credit:

(a) With decrease in amount of such appreciation resulting from decline in fair value of loans.

(b) With amount of appreciation attributable to loans sold or otherwise disposed of.

(See account No. 440.)

NOTE: See Note 1 to account 172.

172—Depreciation of loan values

This account will represent the downward valuation of loans and should be maintained in an amount not less than a conservative estimate of probable losses. This valuation reserve will be adjusted as occasion demands.

Debit:

(a) With amount of decreases in such reserve.

(b) With amount of such loans written off.

Credit:

(a) With amount of such reserve established.

(b) With amount of increases in such reserve.

(c) With amount of recoveries on such loans written off.

(See account Nos. 170 and 445.)

NOTE: Usually, this account will be subdivided into at least two accounts:

172.1 *Allowance for Losses*—which represents losses the licensee expects to realize on specific loans.

172.2 *Other Depreciation of Loan Values*—which represents the Board of Directors/General Partner(s) downward valuation of specific loans. However, if securities are held to maturity, no loss would be expected. An example would be money mortgage discounts.

173—Unearned discount, fees, and other charges on loans

This account will represent the amount of unearned discount, fees, and other charges included in the face amount of loans made to small business concerns pursuant to Section 305 of the Small Business Investment Act to such small business concerns.

Debit:

(a) With amount of unearned discount, fees, and other charges included in the face amount of loans, but withheld from disbursements to debtor small business concerns, which becomes earned through collection or passage of time.

(b) With amount earned of that portion of unearned discount, fees, and other charges included in the face amount of loans, but withheld from disbursements to debtor small business concerns, which is retained by the company in connection with loans participated in by other lenders (the amount to be recorded becomes earned through collection or passage of time).

(c) With amount earned of that portion of unearned discount, fees, and other charges included in the face amount of loans, but withheld from disbursements to debtor small business concerns, which is assigned to the company in connection with its participations in loans of other lenders (the amount to be recorded becomes earned through collection of passage of time).

(d) With amount of unearned discount, fee, and other charges included in the face amount of loans, but withheld from disbursement to debtor small business concerns, which is rebated to borrowers upon early repayment of loans, or is closed into the asset account upon liquidation of loans at less than full amount.

Credit:

(a) With amount of unearned discount, fees, and other charges included in the face amount of loans but withheld from disbursements to debtor small business concerns.

(b) With portion retained by the company of total amount of unearned discount, fees, and other charges included in the face amount of loans, but withheld from disbursements to debtor small business concerns, in connection with loans participated in by other lenders.

(c) With portion assigned to the company of total amount of unearned discount, fees, and other charges included in the face amount of loans, but withheld from disbursements to debtor small business concerns, in connection with its participation in loans of other lenders.

NOTE 1.—A participation is defined as an undivided interest shared with one or more other lenders or investors in a note, debenture, certificate of stock, or other instrument evidencing a loan to, or equity financing of, a small business concern.

NOTE 2.—Unearned discount in this account will be transferred, as appropriate to account No. 512—Interest on loans, as it becomes earned, and unearned fees and other charges will be transferred to account No. 536—application and appraisal fees, under similar circumstances.

NOTE 3.—Any fees and other charges considered earned immediately upon closing of loans will be recorded in the income account at once without first being entered in this account.

NOTE 4.—Appropriate subsidiary records should be maintained for all unearned amounts included in this account to permit identification of such amounts with the particular loans to which they relate.

180—Debt securities, with stock purchase warrants or options, and/or convertible

This account will represent the unpaid principal balance of small business concerns' debt securities, with attached stock purchase warrants or options, and/or convertible, acquired by the company pursuant to Section 304 of the Small Business Investment Act of 1958, as amended. If the stock purchase warrants, options, or other stock rights have a separate purchase cost, or if a separate cost has otherwise been determined for them, the warrants, options, or other stock rights will be reflected at such cost in account No. 197.

Debit:

(a) With face amounts of debt securities, with stock purchase warrants or options, and/or convertible, acquired.

(b) With portion retained by company of debt securities, with stock purchase war-

ants or options. and/or convertible, in
hich participations are sold to others.
(c) With amount of participations in pur-
iases by others of debt securities, with
tock purchase warrants or options, and/or
onvertible.
(d) With reversal of prior credits when
hecks received representing repayments
re dishonored, etc.
Credit:
(a) With amount collected on face amount
f debt securities, with stock purchase war-
ants or options, and/or convertible.
(b) With company's share of amount col-
ected on principal of debt securities, with
tock purchase warrants or options, and/or
onvertible, in which participations are sold
o others.
(c) With amounts by which participations
purchases by others of debt securities,
ith stock purchase warrants or options,
nd/or convertible, are reduced by repay-
ents transmitted by the "initiating" com-
any.
(d) With unpaid principal of debt securi-
es, with stock purchase warrants or op-
ons, and/or convertible, or portions there-
f, converted into capital stock.
(e) With unpaid principal of debt securi-
es, with stock purchase warrants or op-
ons, and/or convertible, which have been
ivested of stock rights through (1) the ex-
iration of the conversion privilege, (2) the
xercise or the expiration of rights con-
eyed by nondetachable or detachable stock
urchase warrants or options, or (3) the de-
achment of detachable stock purchase war-
ants or options.
(f) With unpaid principal of debt securi-
es, with stock purchase warrants or op-
ons, and/or convertible, transferred to
ssets acquired in liquidation of loans and
ebt securities.
(g) With unpaid principal of debt securi-
es, with stock purchase warrants or op-
ons, and/or convertible, written off or dis-
osed of otherwise.

NOTE 1.—A participation is defined as an
ndivided interest shared with one or more
ther lenders or investors in a note, deben-
ure, certificate of stock, or other instru-
ent evidencing a loan to, or equity financ-
ng of, a small business concern.

NOTE 2.—It is assumed that in all arrange-
ents for participation in the purchase of
ebt securities, with stock purchase war-
ants or options, and/or convertible, the
initiating" company will service the financ-
ng.

NOTE 3.—It is recommended that individ-
al ledger cards or sheets be maintained for
ll debt securities, convertible, and with
tock purchase warrants or options. Such
edger cards or sheets should contain the
etailed information needed for account No.
88—Unearned discount, fees, and other
harges on debt securities, and for activities pertaining to participations purchased or sold.

(See account Nos. 184, 186, 187, 188, and memorandum record No. NA-10.)

184—Debt securities divested of stock rights

This account will represent the unpaid principal balance of small business concerns' debt securities which have been divested of stock rights through (1) the expiration of the conversion privilege of convertible debt securities, (2) the exercise or the expiration of rights conveyed by nondetachable or detachable stock purchase warrants or options of debt securities, or (3) the detachment of detachable stock purchase warrants or options, obtained in connection with the acquisition of debt securities pursuant to Section 304 of the Small Business Investment Act of 1958, as amended.

Debit:

(a) With unpaid principal of debt securities divested of stock rights through (1) the expiration of the conversion privilege, (2) the exercise or the expiration of rights conveyed by nondetachable or detachable stock purchase warrants or options, or (3) the detachment of detachable stock purchase warrants or options.

(b) With company's retained portion of debt securities participated in by others which have been subsequently divested of stock rights.

(c) With amount of participations in purchases by others of debt securities which have been subsequently divested of stock rights.

(d) With reversal of prior credits when checks received representing repayments are dishonored, etc.

Credit:

(a) With amount collected on face amount of debt securities divested of stock rights.

(b) With company's share of amount collected on principal of debt securities participated in by others which have been subsequently divested of stock rights.

(c) With full amount by which participations in purchases by others of debt securities which have been subsequently divested of stock rights are reduced by repayments transmitted by the "initiating" company.

(d) With unpaid principal of debt securities divested of stock rights transferred to assets acquired in liquidation of loans and debt securities.

(e) With unpaid principal of debt securities divested of stock rights written off or disposed of otherwise.

NOTE: It is recommended that individual ledger cards or sheets be maintained for all debt securities which have been divested of stock rights. Such ledger cards or sheets should contain the detailed information needed for account No. 188—Unearned discount, fees, and other charges on debt securities.

(See account Nos. 186, 187, and 188.)

186—Appreciation of debt securities of SBC's

This account will represent the amount by which the licensee's Board of Directors/General Partner(s) has valued debt securities with equity features above cost of such securities.

Debit:

(a) With amount of such appreciation recognized.

(b) With amount of increases in such appreciation recognized.

Credit:

(a) With decrease in amount of such appreciation resulting from decline in fair value of securities.

(b) With amount of appreciation attributable to securities sold or otherwise disposed of.

(See account No. 440.)

NOTE: See Note 1 to account 187.

187—Depreciation of debt securities values

This account will represent the downward valuation of debt securities, with stock purchase warrants or options, and/or convertible, and debt securities divested of stock rights and should be maintained in an amount not less than a conservative estimate of probable losses. This valuation reserve will be adjusted as occasion demands.

Debit:

(a) With amount of decreases in such reserve.

(b) With amount of reserve established in this account for debt securities which are written off, sold, or disposed of otherwise.

(c) With amount of writedown of such debt securities, not to exceed the amount of reserve established therefor in this account.

Credit:

(a) With amount of such reserve established.

(b) With amount of increases in such reserve.

NOTE 1.—When debt securities of small business concerns are sold by the company or disposed of otherwise, cash or other appropriate asset account will be debited for the amount received. Account 702 will be debited for the amount of the loss, and the appropriate investment account will be credited for the related cost value carried therein. If a gain over cost is realized, such gain will be credited to account No. 572. The amount of the reserve which has been established in this account for the debt security sold or disposed of otherwise will be reversed and offset against account No. 445.

NOTE 2.—Usually, this account will be subdivided into at least two accounts:

187.1 *Allowance for Losses*—which represents losses the licensee expects to realize on specific debt securities.

187.2 *Other Depreciation of Debt Securities Values*—which represents the Board of Directors/General Partner(s) downward valuation of specific debt securities. However, if securities are held to maturity no loss would be expected. An example is money mortgage discount.

188—Unearned discount, fees and other charges on debt securities

This account will represent the amount of unearned discount, fees, and other charges included in the face amount of small business concerns's debt securities acquired pursuant to Section 304 of the Small Business Investment Act of 1958, as amended, and which is withheld from disbursements to such small business concerns.

Debit:

(a) With amount of unearned discount, fees, and other charges included in the face amount of debt securities, but withheld from disbursements to debtor small business concerns, which becomes earned through collection or passage of time.

(b) With amount earned of that portion of unearned discount, fees, and other charges included in the face amount of debt securities, but withheld from disbursements to debtor small business concerns, which is retained by the company in connection with purchases of debt securities participated in by other investors (the amount to be recorded becomes earned through collection or passage of time).

(c) With amount earned of that portion of unearned discount, fees, and other charges included in the face amount of debt securities, but withheld from disbursements to debtor small business concerns which is assigned to the company in connection with its participations in purchases of debt securities by other investors (the amount to be recorded becomes earned through collection or passage of time).

(d) With amount of unearned discount, fees, and other charges included in the face amount of debt securities, but withheld from disbursements to debtor small business concerns, which is rebated to borrowers upon early repayment of debt securities, or is closed into the asset account upon liquidation of debt securities at less than full amount.

Credit:

(a) With amount of unearned discount (including that equivalent to the determined cost of warrants, options, and other stock rights, as explained in Note 2 of the account No. 197), fees, and other charges included in the face amount of debt securities but withheld from disbursements to debtor small business concerns.

(b) With portion retained by the company of total amount of unearned discount, fees, and other charges included in the face amount of debt securities, but withheld from disbursement to debtor small business concerns, in connection with purchases of debt securities participated in by other investors.

(c) With portion assigned to the company of total amont of unearned discount, fees, and other charges included in the face amount of debt securities, but withheld from disbursement to debtor small business concerns, in connection with its participations in purchases of debt securities by other investors.

NOTE 1.--A participation is defined as an undivided interest shared with one or more lenders or investors in a note, debenture, certificate of stock, or other instrument evidencing a loan to, or equity financing of, a small business concern.

NOTE 2.—Unearned discount in this account will be transferred, as appropriate, to account No. 516—Interest on debt securities, as it becomes earned, and unearned fees and other charges will be transferred to account No. 536—Application and appraisal fees, under similar circumstances.

NOTE 3.—Any fees and other charges considered earned immediately upon closing of financing through purchase of debt securities will be recorded in the income account at once without first being entered in this account.

NOTE 4.—Appropriate subsidiary records should be maintained for all earned amounts included in this account to permit identification of such amounts with the particular debt securities to which they relate.

190—Capital stock of SBCs, with stock purchase warrants or options, and/or convertible

This account will represent the value at cost of small business concerns' capital stock, with attached stock purchase warrants or options, and/or convertible, acquired by the company pursuant to Section 304 of the Small Business Investment Act of 1958, as amended. If the stock purchase warrants, options, or other stock rights have a separate purchase cost, or if a separate cost has otherwise been determined for them, the warrants, options, or other stock rights will be reflected at such cost in account No. 197.

Debit:

(a) With cost of such capital stock of SBCs, with stock purchase warrants or options, and/or convertible, acquired.

(b) With portion retained by company of the capital stock of SBCs, with stock purchase warrants or options, and/or convertible, in which participations are sold to others.

(c) With amount of participations in acquisitions by others of capital stock of SBCs, with stock purchase warrants or options, and/or convertible.

Credit:

(a) With cost of such capital stock of SBCs, with stock purchase warrants or options, and/or convertible, which has been divested of stock purchase rights through (1) the expiration of the conversion privilege, (2) the exercise or the expiration of rights conveyed by nondetachable or detachable stock purchase warrants or options, or (3) the detachment of detachable stock purchase warrants or options.

(b) With cost of such capital stock of SBCs, with stock purchase warrants or options, and/or convertible, converted to another class of capital stock.

(c) With cost of such capital stock of SBCs, with stock purchase warrants or options, and/or convertible, written off or disposed of otherwise.

NOTE 1.—A participation is defined as an undivided interest shared with one or more other lenders or investors in a note, debenture, certificate of stock, or other instrument evidencing a loan to, or equity financing of, a small business concern.

NOTE 2.—It is assumed that in all arrangements for participation in the acquisition of capital stock of SBCs, with stock purchase warrants or options, and/or convertible, the "initiating" company will service the financing.

NOTE 3.--It is recommended that individual ledger cards or sheets be maintained for all capital stock of SBCs, with stock purchase warrants or options, and/or convertible.

(See account Nos. 191, 193 and memorandum record No. NA-10.)

191—Capital stock SBCs—other

This account will represent the value at cost of small business concerns capital stock acquired by the company without conversion privileges or stock purchase warrants or options, or existing on the books as the result of (1) the expiration of the conversion privilege of convertible capital stock of SBCs, (2) the exercise or the expiration of rights conveyed by nondetachable or detachable stock purchase warrants or options, or (3) the detachment of detachable stock purchase warrants or options, obtained in connection with the acquisition of capital stock of small business concerns pursuant to Section 304 of the Small Business Investment Act of 1958, as amended.

Debit:

(a) With cost of such capital stock of SBCs—other acquired through (1) purchase (2) conversion of convertible debt securities or convertible capital stock of SBCs, or (3) exercise of rights conveyed by stock purchase warrants or options issued by small business concerns in connection with their debt securities or capital stock acquired by the company.

(b) With cost of such capital stock of SBCs—other resulting from (1) the expiration of the conversion privilege of convertible capital stock of SBCs, (2) the expiration of rights conveyed by nondetachable or detachable stock purchase warrants or options, or (3) the detachment of detachable stock purchase warrants or options, obtained in connection with the acquisition of capital stock of small business concerns.

(c) With portion retained by company of the capital stock of SBCs—other in which participations are sold to others.

(d) With amount of participations in capital stock of SBCs—other acquired by or subsequently existing on the books of others without conversion privileges or stock purchase warrants or options.

Credit:

(a) With cost of such capital stock of SBCs—other written off or disposed of otherwise.

NOTE 1.—It is recommended that individual ledger cards or sheets be maintained for all capital stock of SBCs—other acquired or subsequently existing without conversion privileges or stock purchase warrants or options.

NOTE 2.—In acquisitions of capital stock through exercise of rights conveyed by stock purchase warrants or options issued by small business concerns in connection with their debt securities or capital stock previously acquired by the company, the amount of the expenditure made by the company in the current acquisition of the capital stock will be considered the cost of the stock in those instances when the stock purchase rights surrendered have only a nominal value; otherwise, the cost of the stock will comprise the current expenditure plus the cost of the warrants or options surrendered.

NOTE 3.—In conversion of convertible debt securities of small business concerns into capital stock, or in conversions of convertible capital stock of SBCs into another class of capital stock, the value at cost of the particular convertible security should be considered the cost of the capital stock received in the conversion.

(See account Nos. 190, 193, and 197.)

192—Appreciation of capital stock of SBCs

This account will represent the amount by which the licensee's Board of Directors/General Partner(s) has valued capital stock of SBCs above cost of such securities.

Debit:

(a) With amount of such appreciation recognized.

(b) With amount of increases in such appreciation recognized.

Credit:

(a) With decrease in amount of such appreciation resulting from decline in fair value of securities.

(b) With amount of appreciation attributable to securities sold or otherwise disposed of.

(See account No. 440.)

NOTE: See Note 1 to account No. 193.

193—Depreciation of capital stock values

This account will represent the downward valuation of (1) capital stock of SBCs, with stock purchase warrants or options, and/or convertible, and (2) capital stock of SBCs—other, and should be maintained in an amount not less than a conservative estimate of probable losses. This valuation reserve will be adjusted as occasion demands.

Debit:

(a) With amount of decreases in such reserve.

(b) With amount of reserve established in this account for capital stock which is written off, sold, or disposed of otherwise.

(c) With amount of writedown of such capital stock, not to exceed the amount of reserve established therefor in this account.

Credit:

(a) With amount of such reserve established.

(b) With amount of increase in such reserve.

NOTE 1.—When capital stock of SBCs is sold by the company or disposed of otherwise, cash or other appropriate asset account will be debited for the amount received. Account 704 will be debited for the amount of the loss and the appropriate investment account will be credited for the related cost value carried therein. If a gain over cost is realized, such gain will be credited to account No. 574. The amount of the reserve which has been established in the account for capital stock sold or disposed of otherwise will be reversed and offset against account No. 445.

NOTE 2.—Usually, this account will be subdivided into at least two accounts:

193.1 *Allowance for Losses*—represents losses the licensee expects to realize on specific capital stock investments.

193.2 *Other Depreciation of Stock Values*—represents the downward valuation of specific stock investments. However, the licensee's management expects the decline to be temporary and thereby suffer no loss on the investment. An example is a temporary market decline of public tradeable stocks that are unrestricted.

(See account Nos. 190, 192, and 445.)

194—Equity interests of unincorporated concerns

This account will represent the licensee's investment in equity types securities of a limited partnership or other type of unincorporated concern. The account will be maintained on the equity method of accounting basis and will show the licensee's investment after considering its proportionate share of realized income (loss) of the unincorporated concern as well as distributions.

Debit:

(a) With cost of equity interest acquired.

(b) With the licensee's proportionate share of the concern's net income.

Credit:

(a) With the licensee's proportionate share of net loss.

(b) With the licensee's proportionate share of cash distributions.

(c) With the value on equity basis of the licensee's investment when sold or disposed of otherwise.

(See account Nos. 195 and 196.)

195—Appreciation of equity interest of unincorporated concerns

This account will represent the amount by which the licensee's Board of Directors/General Partner(s) has valued equity interests of unincorporated concerns above the carrying value of such securities on the equity method of accounting.

Debit:

(a) With amount of such appreciation recognized.

(b) With amount of increases in such appreciation recognized.

Credit:

(a) With decrease in amount of such appreciation resulting from decline in fair value of securities.

(b) With amount of appreciation attributable to securities sold or otherwise disposed of.

NOTE: See Note 1 to account 196.

(See account Nos. 194, and 440.)

196—Depreciation of equity interests of unincorporated concerns

This account will represent the amount by which the licensee's Board of Directors/General Partner(s) has valued equity interests of unincorporated concerns below the carrying value of such securities on the equity method of accounting.

Debit:

(a) With decrease in amount of such depreciation resulting from increase in fair value of such equity interests.

(b) With amount of depreciation attributable to equity interests sold or otherwise disposed of.

Credit:

(a) With amount of such depreciation recognized.

(b) With amount of increase in such depreciation recognized.

NOTE 1.—When equity interests are sold by the company or disposed of otherwise, cash or other appropriate asset account will be debited for the amount received. Account 705 will be debited for the amount of the loss and the appropriate investment account will be credited for the related cost value carried therein. If a gain over cost is realized, such gain will be credited to account No. 575. The amount of the reserve which has been established in the account for equity interest sold or disposed of otherwise will be reversed and offset against account No. 445.

NOTE 2.—This account will usually be the same as allowance for loss on equity interests of unincorporated concerns. Otherwise, the account should be subdivided.

(See account Nos. 194, 195 and 445.)

197—Warrants, options, and other stock rights acquired from SBCs

This account will represent the value at purchase price or at cost as otherwise determined of warrants, options, and other stock rights acquired by the company from small business concerns pursuant to Section 304 of the Small Business Investment Act of 1958, as amended. The account will include conversion rights for which a separate cost has been determined.

Detachable stock purchase warrants or options on stock of SBCs for which no consideration is given distinct from that surrendered for the debt securities or capital stock which they accompany, or for which no separate cost has been determined, will be reflected in memorandum record No. NA-10, if retained after the financing instruments which they accompanied have been disposed of.

Debit:

(a) With cost of such warrants, options, or other stock rights acquired.

(b) With portion retained by company of the warrants, options, or other stock rights in which participations are sold to others.

(c) With amount of participations in acquisitions by others of warrants, options, or other stock rights.

Credit:

(a) With cost of such warrants, options, or other stock rights surrendered in exercising the stock rights.

(b) With cost of such warrants, options, or other stock rights written off or disposed of otherwise.

(c) With cost of such warrants, options, or other stock rights for which the exercise period has expired.

NOTE 1.—It is recommended that individual ledger cards or sheets be maintained for all warrants, options, or other stock rights acquired from SBCs.

NOTE 2.—The cost of warrants, options, and other stock rights acquired from SBCs for a separate consideration will be charged to this account, with a credit to cash. If warrants, options, or other stock rights are acquired from SBCs without a separate consideration and a cost thereof is otherwise determined, such cost will be established in this account. (The determined cost of warrants, options, and other stock rights acquired with debt securities without a separate consideration therefore shall be arrived at giving full consideration to the grade of the debt security.) The payment for the debt security or capital stock certificate which accompanied the stock rights will be allocated between the obligation or stock and the stock rights. Cash will be credited for the determined cost of the stock rights. Cash also will be credited for the amount of the debt security or stock received less the amount withheld from disbursement in relation to the debt security or stock received, which is equivalent to the determined cost of the stock rights plus (in the case of a debt security) any other withholding from net funds advanced. In the purchase of a debt security the deduction equal to the determined cost of the stock rights, plus any other withholding from net funds advanced, will be treated as unearned discount on the debt security and credited to account No. 188—Unearned discount, fees, and other charges on debt securities. In the case of a purchase of capital stock, the deduction equal to the determined cost of the stock rights will serve to reduce the cost of the stock to be recorded in account No. 190—Capital stock of SBCs, with stock purchase warrants or options, and/or convertible.

(See account Nos. 199, 576 and 706.)

198—Appreciation of warrants, options, and other stock rights acquired from SBCs

This account will represent the amount by which the licensee's Board of Directors General Partner(s) has valued warrants, options and other stock rights above cost of such securities.

Debit:

(a) With amount of such appreciation recognized.

(b) With amount of increases in such appreciation recognized.

Credit:

(a) With decrease in amount of such appreciation resulting from decline in fair value of securities.

(b) With amount of appreciation attributable to securities sold or otherwise disposed of.

(See account Nos. 197, 199 and 440.)

NOTE: See Note 1 to account No. 199.

199—Depreciation of warrants, options, and other stock rights acquired from SBCs

This account will represent the Board of Directors/General Partner(s) downward valuation of warrants, opinions, and other stock rights acquired from SBCs, and should represent an amount not less than a conservative estimate of probable losses. This valuation reserve will be adjusted as occasion demands.

Debit:

(a) With amount of decreases in such reserve.

(b) With amount of reserve established in this account for warrants, options, and other stock rights acquired from SBCs which are written off, sold, or disposed of otherwise (contra credit will be made to account No. 445).

(c) With amount of writedown of such warrants, options, and other stock rights acquired from SBCs, not to exceed the amount of reserve established therefor in this account.

Credit:

(a) With amount of such reserve established.

(b) With amount of increases in such reserve.

NOTE 1.—When warrants, options, and other stock rights acquired from SBCs are sold by the company or disposed of otherwise, cash or other appropriate asset account will be debited for the amount received, account 706 will be debited for the amount of the loss and the appropriate investment account will be credited for the related cost value carried therein. If a gain over cost is realized, such gain will be credited to account 576. The amount of the reserve which has been established in the account for warrants, options, or other stock rights acquired, sold or disposed of otherwise will be reversed and offset against account 445.

NOTE 2.—This account will usually represent the allowance for losses on warrants, options, and other stock right. Otherwise, this account should be subdivided.

(See account Nos. 197, 198, and 445.)

200—Receivables due from debtors on sale of assets acquired in liquidation of portfolio securities

This account will represent the unpaid balance of accounts receivable, notes receivable, sales contracts, purchase money mortgages, and similar evidences of indebtedness to the company arising from the sale of assets acquired in liquidation of portfolio securities.

Debit:

(a) With amount of such receivables.

(b) With amount of participation in amounts due from debtors on sale of assets acquired in liquidation of portfolio securities of other lenders or investors.

Credit:

(a) With amount collected on principal of such receivables.

(b) With amount transferred to account No. 204—assets acquired in liquidation of portfolio securities. (Noncash assets other than receivables obtained on sale of assets acquired in liquidation of portfolio securities should be reflected at cost in account No. 204)

(c) With unpaid principal balance written off or disposed of otherwise.

NOTE: It is recommended that subsidiary records to be maintained in sufficient detail to disclose for report and tax purposes all transactions affecting amounts due from debtors on sale of assets acquired in liquidation of portfolio securities.

(See account Nos. 203, 204.)

203—Depreciation in values of receivables from debtors on sale of assets acquired in liquidation of portfolio securities

This account will represent the downward valuation on amounts due from debtors and securities received on sale of assets acquired in liquidation of portfolio securities, and should be maintained in an amount not less than a conservative estimate of probable losses. This valuation reserve will be adjusted as occasion demands.

Debit:

(a) With amount of decreases in such reserve.

(b) With amount due from debtors on sale of assets acquired in liquidation of portfolio securities written off.

Credit:

(a) With amount of such reserve established.

(b) With amount of increases in such reserve.

(c) With amount of recoveries on such items written off.

NOTE: Occasionally, this account will be subdivided into at least two accounts:

203.1 *Allowance for Losses*—which represents losses the licensee expects to realize on specific receivables from debtors.

203.2 *Other Depreciation of Receivables from Debtors*—Represents the Board of Directors/General Partner(s) downward valuation of specific receivables from debtors. However, if securities are held to maturity no loss would be expected. An example is money mortgage discount.

(See account Nos. 200 and 445.)

204—Assets acquired in liquidation of portfolio securities

This account will represent the company's investment in assets acquired by foreclosure, or otherwise, in liquidation of portfolio securities. Judgments, sheriffs' certificates (including property acquired subject to redemption), etc., will be reflected in this account.

The investment in property at the date of acquisition by the company should be determined by the Board of Directors/General Partner(s) on the most suitable of the following basis: (1) Bid-in price of the property; (2) agreed consideration for the property; (3) fair appraised value of the property. Any remaining indebtedness will be written off unless the company expects further liquidation of the debt from other sources. Insofar as practicable, investment values will be determined for each individual asset, or unit, at the time such assets are recorded in this account, and when an asset is sold only an amount equal to the investment in such asset will be credited to this account.

The company's investment in mortgaged real property acquired in liquidation of portfolio securities should be recorded at gross value as determined by the Board of Directors/General Partner(s), reduced as necessary to bring the net recorded value to no more than the outstanding principal balance of the related portfolio securities involved. The amount of the existing mortgage or mortgages on such property acquired by the company will be reflected in account No. 313.

The company's investment in judgments should be recorded at the face amount of the judgment. When the company acquires the underlying security to the related portfolio securities outright or subject to redemption, the investment in the property should be determined in accordance with the basis set forth in the second paragraph.

Debit:

(a) With amount of the company's investment in the assets at the time of the acquisition.

(b) With amount of the company's investment in the assets at the date of judgment, sheriff's certificate, etc.

(c) With amount of participation in assets acquired by others in liquidation of portfolio securities.

Credit:

(a) With proceeds of partial sale of the assets.

(b) With amount of the company's investment at date of sale, or other disposition of the assets.

(c) With amount written off.

NOTE 1.—Collateral notes receivable acquired in the liquidation of portfolio securities will be reflected in this account; but notes receivable that are subsequently accepted in connection with the disposition of assets acquired in the liquidation of portfolio securities will be included in account No. 200—Receivables from debtors on sale of assets acquired in liquidation of portfolio securities.

NOTE 2.—It is recommended that subsidiary records be maintained in sufficient detail to disclose for report and tax purposes all transactions affecting assets acquired in liquidation of portfolio securities.

(See account Nos. 170, 180, 184, and 200.)

205—Appreciation of assets acquired in liquidation of portfolio securities

This account will represent the amount by which the licensee's Board of Directors/General Partner(s) has valued assets acquired above cost of such securities.

Debit:

(a) With amount of such appreciation recognized.

(b) With amount of increases in such appreciation recognized.

Credit:

(a) With decrease in amount of such appreciation resulting from decline in fair value of securities.

(b) With amount of appreciation attributable to securities sold or otherwise disposed of.

NOTE: See Note 1 to account No. 206.

(See account Nos. 204, 206, and 440.)

206—Depreciation of assets acquired in liquidation of portfolio securities

This account will represent the downward valuation of assets acquired in liquidation of portfolio securities, and should be maintained in an amount not less than a conservative estimate of probable losses. This valuation reserve will be adjusted as occasion demands.

Debit:

(a) With amount of decreases in such reserve.

(b) With amount of reserve established in this account for assets acquired in liquidation of portfolio securities which are written off, sold, or disposed of otherwise (contra credit will be made to account No. 445).

(c) With amount of writedown of such assets acquired in liquidation of portfolio securities, not to exceed the amount of reserve established therefor in this account.

Credit:

(a) With amount of such reserve established.

(b) With amount of increases in such reserve.

NOTE 1.—When assets acquired in liquidation of portfolio securities are sold by the company or disposed of otherwise, cash or other appropriate asset account will be debited for the amount received, account 707 will be debited for the amount of the loss and account No. 204 will be credited for the related cost value carried therein. If a gain over recorded investment in the assets acquired in liquidation is realized, such gain will be credited to account No. 577. The amount of the reserve which has been established in this account for other assets acquired in liquidation of portfolio securities will be reversed and offset against account 445 when such assets are sold or disposed of otherwise.

NOTE 2.—This account will usually represent the allowance for losses on other assets acquired in liquidation of portfolio securities. Otherwise, it should be subdivided.

(See accounts Nos. 204 and 445.)

210—Operating concerns acquired

Occasionally, a licensee takes action to protect its investment in a portfolio concern and as a result acquires a controlling interest in an operating concern. In such cases the licensee will reclassify the aggregate amount due from the portfolio concern to this account. If the concern has ceased operations and is being liquidated, the aggregate amount due from the portfolio concern will be classified as assets acquired in liquidation of portfolio securities (account No. 204) rather than this account.

Debit:

(a) With total amount of the licensee's investment in the operating concern at the time of the acquisition.

(b) With additional financing provided by the licensee.

Credit:

(a) With amount collected from such operating concern.

(b) With proportionate cost of interest sold or disposed of otherwise.

(c) With amounts written off.

NOTE: It is recommended that individual ledger cards or sheets be maintained for individual loans and investments by operating concerns acquired.

(See account Nos. 211 and 212.)

211—Appreciation of operating concerns acquired

This account will represent the amount by which the licensee's Board of Directors/General Partner(s) has valued securities of operating concerns acquired above cost of such securities.

Debit:

(a) With amount of such appreciation recognized.

(b) With amount of increases in such appreciation recognized.

Credit:

(a) With decrease in amount of such appreciation resulting from decline in fair value of securities.

(b) With amount of appreciation attributable to securities sold or otherwise disposed of.

(See accounts 210, 212, and 440.)

NOTE: See Note 1 to account No. 212.

212—Depreciation of operating concerns acquired

This account will represent the amount by which the licensee's Board of Directors/General Partner(s) has valued securities of operating concerns acquired below cost of such securities.

Debit:

(a) With decreases in amount of such depreciation resulting from increases in fair value of such equity interests.

(b) With amount of depreciation attributable to equity interests sold or otherwise disposed of.

Credit:

(a) With amount of such depreciation recognized.

(b) With amount of increase in such depreciation recognized.

NOTE 1.—When investments in operating concerns are sold by the company or disposed of otherwise, cash or other appropriate asset account will be debited for the amount received. Account 708 will be debited for the amount of the loss and the appropriate investment account will be credited for the related cost value carried therein.

If a gain over cost is realized, such gain will be credited to account No. 578. The amount of the reserve which has been established in the account for the investment sold or disposed of otherwise will be reversed and offset against account No. 445.

NOTE 2.—Usually, this account will be subdivided into at least two accounts:

212.1 *Allowance for Losses*—which represents losses the licensee expects to realize on the specific operating concern acquired.

212.2 *Other Depreciation of Values*—represents the Board of Directors/General Partner(s) downward valuation of specific loans. However, if securities are held to maturity no loss would be expected. An example is money mortgage discount.

(See account Nos. 210, 211, and 445.)

220—Notes and other securities received on sale of portfolio securities

This account will represent the securities taken by the licensee as part of the net sales price of portfolio securities sold.

Debit:

(a) With assigned cost of such securities when acquired.

Credit:

(a) With cost of such securities when sold.

(b) With cost of such securities when written off or disposed of otherwise.

NOTE 1.—It is recommended that individual ledger cards or sheets be maintained for securities received on sale of portfolio securities.

(See accounts 221, 222, and 223.)

221—Other securities received

This account will represent securities received by the licensee for which no funds were provided and which would not otherwise be classified as loans and investments. An example of such securities would be a dividend in kind received by licensee from a portfolio concern.

Debit:

(a) With fair value of such securities when received.

Credit:

(b) With carrying value of such securities when sold, written off or disposed of otherwise.

(See accounts 220, 222, and 223.)

222—Appreciation of other securities

This account will represent the amount by which the licensee's Board of Directors/General Partner(s) has valued other securities with equity features above cost of such securities.

Debit:

(a) With amount of such appreciation recognized.

(b) With amount of increases in such appreciation recognized.

Credit:

(a) With decrease in amount of such appreciation resulting from decline in fair value of securities.

(b) With amount of appreciation attributable to securities sold or otherwise disposed of.

NOTE: See Note 1 to account No. 223.

(See accounts 220, 221, 223, and 440.)

223—Depreciation of other securities

This account will represent the amount by which the licensee's Board of Directors/General Partner(s) has valued other securities below the carrying value of such securities.

Debit:

(a) With decreases in amount of such depreciation resulting from increase in fair value of such securities.

(b) With amount of depreciation attributable to other securities sold or otherwise disposed of.

Credit:

(a) With amount of such depreciation recognized.

(b) With amount of increase in such depreciation recognized.

NOTE 1.—When other securities are sold by the company or disposed of otherwise, cash or other appropriate asset account will be debited for the amount received. Account 709 will be debited for the amount of the loss and the appropriate investment account will be credited for the related cost value carried therein. If a gain over cost is realized, such gain will be credited to account No. 579. The amount of the reserve which has been established in the account for securities sold or disposed of otherwise will be reversed and offset against account No. 445.

NOTE 2.—Frequently, this account will be subdivided into at least two accounts:

223.1 *Allowance for Losses*—represents losses the licensee expects to realize on specific other securities.

223.2 *Other Depreciation of Values*—represents the Board of Directors/General Partner(s) downward valuation of specific securities. However, if securities are held to maturity, no loss would be expected. An example is money mortgage discount. Another example would be temporary market decline of marketable securities.

(See account Nos. 220, 221, 222, and 445.)

230—Prepaid expenses

This account will represent the unexpired or unconsumed portion of expenses expressly applicable to future periods for which no specific accounts have been provided. Such expenses should be amortized over the appropriate period. An example of such prepaid expense is debt discount and expense that may result from obtaining leverage funds.

Debit:

(a) With amount of prepaid expenses.

Credit:

(a) With the proportional amount of such expenses applicable to the period.

NOTE: Subsidiary records should be maintained to identify the items reflected in this account and to facilitate their amortization.

231—Deferred charge

Timing differences will exist between accounting income and taxable income and thereby may cause a prepayment of taxes which is considered to be a deferred charge to future tax expense. The prepayment is based on accounting income and primarily will result from provision for loss on stock of SBCs. This account will represent such deferred charges recognized.

Debit:

(a) Such account for amounts when prepaid.

Credit:

(a) Such account for amounts that have been previously prepaid that are being applied during the period.

(See account No. 380.)

240—Furniture and equipment

This account will represent the cost of furniture, fixtures, and equipment, including automobiles, owned by the company. The cost of freight, drayage, cartage, express, etc., in connection with the purchase of such items of furniture and equipment, will be included in this account.

Debit:

(a) With cost of such assets purchased.

Credit:

(b) With cost of such assets at the time of sale or other disposition.

NOTE: An inventory record should be maintained for all such assets and each item should be tagged or numbered to facilitate ready identification.

(See account No. 241.)

241—Accumulated depreciation of furniture and equipment

This account will represent the valuation reserve provided for depreciation of furniture, fixtures, and equipment, including automobiles, owned by the company. This account should be maintained in an amount not less than a conservative estimate of the expired service life of such assets while owned by the company.

Debit:

(a) With amount of depreciation accumulated, when such an asset is sold or disposed of otherwise.

Credit:

(a) With amount necessary to depreciate the cost of such assets over the estimated service life.

(See account Nos. 240 and 655.)

250—Corporate premises owned

This account will represent the actual cost of acquisition of the land and building used as the company's office quarters. The account also will include the actual cost of any improvements, such as street, sidewalk and other benefits, applicable to the land, and any improvements applicable to the building.

Debit:

(a) With actual cost of acquisition of the land and building.

(b) With actual cost of any improvement to the land and/or building.

Credit:

(a) With the acquisition cost of the land and/or building, plus the cost of improvements made thereto, when the land and/or building is sold or disposed of otherwise.

(See account No. 251.)

251—Accumulated depreciation of corporate premises owned

This account will represent the valuation reserve provided for depreciation of the building and other depreciable improvements of corporate premises owned and used as the company's office quarters. This account should be maintained in an amount not less than a conservative estimate of the expired service life of such building and improvements while owned by the company.

Debit:

(a) With amount of depreciation accumulated, when such an asset is sold or disposed of otherwise.

Credit:

(a) With the amount necessary to depreciate the cost of such assets over the estimated service life.

(See account Nos. 250 and 655.)

252—Leasehold improvements

This account will represent the actual cost of improvements to leased property used as the company's office quarters. The amount of this account will be amortized through account No. 656 over the life of the lease or the life of the improvements, whichever is the shorter.

Debit:

(a) With actual cost of improvements to leasehold.

Credit:

(a) With the amount necessary to amortize the cost of leasehold improvements.

265—Amounts due from directors, officers, general partners, limited partners and employees

This account will represent the unpaid balance of amounts advanced to directors, officers, general partners, limited partners and employees.

Debit:

(a) With amount of such advances made.

Credit:

(a) With amount collected on such advances.

(b) With amount transferred to appropriate expense classification upon proper authorization.

(c) With amount written off or disposed of otherwise.

(See account No. 709.)

266—Organization costs

This account will represent the amount of legal fees, promotional expense, stock certificate cost, incorporation fees, taxes, and other related costs incurred in organizing the company.

Debit:

(a) With amount of such costs incurred.

Credit:

(a) With the amount necessary to amortize the organization costs.

(See account No. 672.)

267—Funds in escrow

This account will represent the amount of funds placed in escrow pending the closing of financing for small business concerns.

Debit:

(a) With amount of funds placed in escrow.

Credit:

(a) With amount of funds withdrawn from escrow.

269—Other assets

This account will represent the amount of assets of the company, at cost, not specifically provided for in other accounts, including recoverable amounts advanced for the protection and preservation of the company's investments (such as the payment of taxes on mortgaged property), but not including short-term loans or debt securities issued to protect the company's interests in previously issued long-term loans or equity securities.

Debit:

(a) With amount of the company's investment in such assets.

Credit:

(a) With amount of such assets sold or disposed of otherwise.

(See account No. 709.)

LIABILITY ACCOUNTS

300—Notes payable to SBA

This account will represent the long-term principal balance of notes payable (1) for funds borrowed and received directly from the Small Business Administration and (2) for funds borrowed from others through guaranteed loans which subsequently have been purchased by the Small Business Administration.

Debit:

(a) With amount of principal payments made on such notes.

(b) With amount of principal transferred to current maturities.

Credit:

(a) With amount of funds borrowed.

(b) With unpaid principal balance of guaranteed loans purchased by SBA (contra debit will be made to account No. 310).

(See account 330.)

301—Debentures payable issued to SBA

This account will represent the loan-term principal balance of funds received by the company under its debentures payable issued to the Small Business Administration for funds borrowed.

Debit:

(a) With amount of principal payments made to SBA on such debentures.

(b) With amount of principal transferred to current maturities.

Credit:

(a) With amount of funds received from SBA under such debentures.

(See account 330.)

310—Notes payable to other than SBA—guaranteed by SBA

This account will represent the long-term principal balance of notes payable for funds borrowed from other than the Small Business Administration and guaranteed by the Small Business Administration.

Debit:

(a) With amount of principal payments made on such notes.

(b) With unpaid principal balance of guaranteed loans purchased by SBA (contra credit will be made to account No. 300).

(c) With amount of principal transferred to current maturities.

Credit:

(a) With amount of funds borrowed.

(See account 330.)

311—Notes payable to other than SBA—not guaranteed by SBA

This account will represent the loan-term principal balance of notes payable for funds borrowed from other than the Small Business Administration and not guaranteed by the Small Business Administration.

Debit:

(a) With amount of principal payments made on such notes.

(b) With amount of principal transferred to current maturities.

Credit:

(a) With amount of funds borrowed.

(See account 331.)

312—Mortgages payable for funds borrowed

This account will represent the long-term principal balance of mortgages payable for funds borrowed on corporate premises or other real estate owned by the company. Purchase money mortgages, conditional sales contracts, or similar documentary evidence of indebtedness given by the company in the acquisition of real property will be included in this account.

Debit:

(a) With amount of principal payments made on such indebtedness.

(b) With amount of principal transferred to current maturities.

Credit:

(a) With amount of funds borrowed.

(See account 331.)

313—Mortgages payable on assets acquired in liquidation of portfolio securities

This account will represent the unpaid principal balance of existing mortgages payable on assets acquired by the company in liquidation of portfolio securities.

Debit:

(a) With amount of principal payments made on such indebtedness.

Credit:

(a) With amount of such indebtedness.

(See account No. 204.)

320—Notes payable—other

This account will represent the unpaid principal balance of notes payable in evidence of amounts owned by the company other than for funds borrowed. Notes payable, conditional sales contracts, and liens for the acquisition of furniture, fixtures, equipment, and automobiles will be included in this account.

Debit:

(a) With amount of principal payments made on such notes.

Credit:

(a) With amount of unpaid principal of such notes executed.

330—Current maturities of notes and debentures payable to or guaranteed by SBA

This account will represent the principal amount due on a current basis (payable by the licensee in the next 12 months of operations) of long-term debt shown in accounts 300, 301 and 310.

Debit:

(a) With amounts paid by the licensee or disposed of otherwise.

Credit:

(a) With amounts that become due by the licensee on a current basis.

(See account Nos. 300, 301, and 310.)

331—Current maturities of notes and debentures payable to others not guaranteed by SBA

This account will represent the principal amount due on a current basis (payable by the licensee in the next 12 months of operations) of long-term debt shown in accounts 311 through 313.

Debit:

(a) With amounts paid by the licensee or disposed of otherwise.

Credit:

(a) With amounts that become due by the licensee on a current basis.

(See account Nos. 311 through 313.)

340—Accounts payable

This account will represent amounts payable on open account. The account also will include accrued compensation payable for services rendered to the company on its participations in financing transactions, and accrued commitment fees payable for having funds made available on a deferred basis by "participating" companies in connection with the financing of, or commitments to finance, small business concerns.

Debit:

(a) With amount of such indebtedness paid, or disposed of otherwise.

Credit:

(a) With amount of such indebtedness incurred.

NOTE 1: A participation is defined as an undivided interest shared with one or more other lenders or investors in a note, debenture, certificate of stock, or other instrument evidencing a loan to, or equity financing of, a small business concern.

NOTE 2: A deferred participation is defined as a commitment under a participation agreement whereby the "participating" company will make funds available on a deferred basis to the "initiating" company in connection with the latter's financing of, or commitment to finance, a small business concern, or in connection with an "initiating" small business investment company's acquisition of loans or equity securities from other such companies.

(See account Nos. 141, 600, and 715.)

341—Accounts payable due parent and partners

This account will represent payables due parent from licensee. Payables due parent will generally be from one of two sources: 1) Expenses shared (pro-rata with the parent, paid by the parent but not yet reimbursed by the licensee and/or (2) parent and/or consolidated group) has a tax loss from which the licensee has received a tax benefit.

Debit:

(a) Cash paid to parent and partners.

(b) Income taxes due from licensee but paid by the parent.

NOTE: The above debit can only arise when the licensee has had the benefit of a prior tax loss from the filing of a consolidatd return.

Credit:

(a) Licensee's share of any expense shared with parent and paid by parent.

(b) Licensee's share of any tax benefit reulting from the filing of a consolidated tax eturn with the parent if the licensee has axable income but the consolidation has a oss.

(c) Any other payable due parent or parter arising from any other source.

350—Accrued interest payable

This account will represent the amount of ability for interest accrued on the company's notes, mortgages and debentures payable. The account will also include accrued nterest payable on other interest-bearing obligations of the company.

Debit:

(a) With amount of such interest paid or disposed of otherwise.

Credit:

(a) With amount of such interest accrued on all interest-bearing obligations covered by this account.

351—Accrued taxes

This account will represent the balance of accrued taxes on payroll, such as the company's portion of social security taxes, which have not been remitted to the appropriate collectors of such taxes.

Debit:

(a) With amount of such taxes paid.

Credit:

(a) With amount of such taxes accrued.

(See account No. 664.)

354—Estimated income taxes accrued

This account will include the balances in subaccounts Nos. 354.1, 354.2, 354.3, etc.

354.1 *Estimated Federal income taxes accrued—This account will represent the balance of estimated Federal income taxes accrued which have not been remitted to the Internal Revenue Service.*

Debit:

(a) With amount of such taxes paid.

Credit:

(a) With amount of such taxes accrued.

(See subaccounts Nos. 720.1 and 722.1.)

354.2 *Estimated State income taxes accrued*—This account will represent the balance of estimated State income taxes accrued which have not been remitted to the appropriate collector of such taxes.

Debit:

(a) With amount of such taxes paid.

Credit:

(a) With amount of such taxes accrued.

(See subaccounts Nos. 720.2 and 722.2.)

358—Other current liabilities

This account will represent other current liability not provided for in other accounts.

Debit:

(a) With amount of such expenses paid or disposed or otherwise.

Credit:

(a) With amount of such expenses accrued.

NOTE: Increases or decreases in the liability for accrued expenses, through accruals or adjustments, will be offset by increases or decreases, respectively, in the appropriate expenses accounts.

360-364—Dividends payable on (Type of class) ———— *capital stock*

These accounts will represent the company's liability for dividends declared by the company's Board of Directors on the respective types and classes of capital stock issued and outstanding. A separate account should be used to reflect the dividends payable for each type and class of capital stock outstanding.

Debit:

(a) With amount of such dividends paid.

Credit:

(a) With amount of such dividends declared payable by the company's Board of Directors.

365-369—Partnership distributions payable to general partners/limited partners

Debit:

(a) With the amount of distributions paid.

Credit:

(a) With the amount of distributions accrued.

370—Employee taxes withheld

This account will represent the amount of income and social security taxes withheld from employee's salaries which have not been remitted to the appropriate collectors of such taxes.

Debit:

(a) With amount of such taxes remitted.

Credit:

(a) With amount of such taxes withheld.

374—Unapplied receipts

This account will represent the amount of funds received by the company which have not been applied to loans, debt securities, interest receivable, etc. This account will be used only in instances when the funds received cannot be applied promptly.

Debit:

(a) With amount of such funds applied or disposed of otherwise.

Credit:

(a) With amount of funds received which cannot be applied promptly.

378—Miscellaneous trust receipts

This account will represent the liability of the company for funds withheld or received in trust, for which no specific account is provided, including earnest money deposits, and funds withheld from employees' salaries for the purpose of United States Savings Bonds, payment of group life insurance premiums, payment of pension fund contributions, etc. The account will also include amounts due other companies that are participants in financing where the licensee is the sponsor and is servicing the debt.

Debit:

(a) With amount of such funds disbursed or disposed of otherwise.

Credit:

(a) With amount of such funds withheld or received.

380—Deferred credit to future taxes

Timing differences will exist between accounting income and taxable income and thereby cause a deferment of tax expense. Such deferred credits usually will result from provision for loss on loans and debt securities. This account will represent such deferred tax payments.

Debit:

(a) Such account with amount of taxes paid which had been previously deferred.

Credit:

(a) Such account with amount of tax payments when deferred.

(See account Nos. 231 and 448.)

383—Other deferred credits

This account will represent the amount of deferred credits of the company not specifically provided for in other accounts.

The account will include any gain on sale of assets which does not qualify as realized gain.

Debit:

(a) With amount of such deferred credits transferred to income or gain, or disposed of otherwise.

Credit:

(a) With amount of such deferred credits established.

NOTE 1.—Accrual of interest receivable should be discontinued with respect to any loan or debt security financing a small business concern which is in bankruptcy, or on the verge thereof, or otherwise considered to be insolvent. Any interest payments received from such a debtor should not be treated as interest income, but should be either credited as payments on principal of the debt or credited as deferred income in this account, pending determination of the appropriate accounting. In less serious situations, when interest receivable is accrued under circumstances in which the financed small business concern is in default to licensee over 6 months, or the fair value of the loan or debt security as determined in good faith by the Board of Directors/General Partner(s) is less than cost, or recovery thereon is doubtful, an addition to the allowance for uncollectible interest receivable should be made in an amount equivalent to the accrual of interest receivable, or, as an alternative, the interest income should be deferred in this account as above indicated.

NOTE 2.—Deferred gain in this account will be transferred to appropriate gain accounts as it is realized.

390—Other liabilities

This account will represent the amount of liabilities of the company not specifically provided for in other accounts.

Debit:

(a) With amount of such liabilities paid or disposed of otherwise.

Credit:

(a) With amount of such liabilities incurred.

CAPITAL ACCOUNTS

400-404 ———— capital stock authorized.

(Type and class)

These accounts will represent the total ar or stated value of the capital stock au- horized, as provided for in the company's harter. A separate account should be pro- ided for each type and class of capital tock authorized.

Debit:

(a) With amount of reductions of such apital stock authorized.

Credit:

(a) With original amount of such capital tock authorized.

(b) With additional amounts of such cap- al stock authorized.

(See account Nos. 405-409 and "Note" of ccounts Nos. 415-419.)

405-409———— unissued capital stock.

(Type and class)

These accounts will represent the total ar or stated value of unissued capital stock the company. A separate account should provided for each type and class of unis- ed capital stock.

Debit:

(a) With original amount of such unissued pital stock, as provided for in the compa- 's charter.

(b) With additional amounts of such unis- ed capital stock authorized.

(c) With par or stated value of capital ock retired.

Credit:

a) With amount of such capital stock ued (contra debit will be made to ac- unts Nos. 410-411).

b) With amount of reductions of capital ock authorized.

See account Nos. 400-404 and "Note" of counts Nos. 415-419.)

0-411———— capital stock subscribed.

(Type and class)

hese accounts will represent the total ount at the subscription price of the mpany's capital stock subscribed. A sepa- e account should be provided for each pe and class of capital stock subscribed. ese accounts will reflect the company's responsibility to issue shares of its stock to subscribers who have made final payment of their capital stock subscriptions.

Debit:

(a) With amount at the subscription price of such subscribed capital stock issued (contra credits will be made to accounts Nos. 405-409 and, as appropriate, No. 420).

(b) With amount at the subscription price of such subscribed capital stock canceled or disposed of otherwise.

Credit:

(a) With amount at the subscription price of such capital stock subscribed.

(See account Nos. 413-414 and "Note" of accounts Nos. 415-419.)

413-414—Capital stock subscriptions receivable————

(Type and class)

These accounts will represent the total unpaid balances of capital stock subscriptions receivable from subscribers of the company's authorized capital stock. A separate subscriptions receivable account should be provided for each type and class of capital stock subscribed.

Debit:

(a) With amount of such capital stock subscriptions received.

Credit:

(a) With amount collected on such capital stock subscriptions.

(b) With amount of such capital stock subscriptions canceled or disposed of otherwise.

(See account Nos. 410-411 and "Note" of accounts Nos. 415-419.)

415-419—Treasury stock————

(Type and class)

These accounts will represent the total amount of the company's issued capital stock which has been reacquired through purchase or donation and has not been retired. A separate account should be provided for each type and class of such capital stock held by the company.

Debit:

(a) With cost of such capital stock acquired through purchase.

(b) With amount of fair market value or par value of such capital stock acquired through donation (contra credit will be made to account No. 420).

Credit:

(a) With cost of such capital stock acquired through purchase, when sold or disposed of otherwise.

(b) With amount of fair market value or par value of such capital stock acquired through donation, when sold or disposed of otherwise.

NOTE: Appropriate subsidiary records should be maintained as deemed necessary.

420—Paid-in surplus

This account will represent the amount of surplus arising from (1) sales initially of the company's capital stock at a price in excess of par value (including amounts transferred from capital stock subscribed at a price above par, when shares are issued); (2) donations to the company of its issued capital stock carried as treasury stock at fair market value or par value; (3) retirements of capital stock purchased at less than the par value thereof; (4) sales of treasury stock in excess of its carrying value on the books of the company; (5) donations or gifts to the company of assets carried at not in excess of fair market value; and (6) other equity transactions with stockholders.

Debit:

(a) With amount of loss on treasury stock sold which was acquired through purchase, but not to exceed the total paid-in surplus. (Any amount of loss in excess of the total of such credits will be charged to account No. 451).

(b) With amount received by the company below fair market value, or par value, whichever applicable, for treasury stock sold which was acquired through donations.

(c) With amount paid by the company in excess of par value, but not to exceed the premium received initially, for shares of capital stock retired (any amount paid in excess of par plus initial premium received will be charged to account No. 451).

Credit:

(a) With amount paid in (including stock dividends from undistributed earnings), or transferred from capital stock subscribed, representing the excess after deduction of underwriters' fees and commissions) over par value of the company's capital stock, when shares are issued.

(b) With amount of fair value or par value of the company's capital stock acquired through donation.

(c) With amount of discount below par value of the company's capital stock acquired through purchases, when such stock is retired.

(d) With amount received by the company in excess of cost, or in excess of fair value or par value, whichever applicable, for treasury stock sold.

(e) With amount not to exceed fair market value of donations or gifts of assets to the company.

430—3% Cumulative preferred stock (Issued to SBA)

This account will be used by 301(d) licensees only and will represent the preferred stock sold to the Small Business Administration at its par value by the licensee. Such stock is not included in capital stock accounts Nos. 400 and 414 because such stock is not considered private capital for leverage or regulatory purposes.

Debit:

(a) Such account with the par value of preferred stock repurchased by the licensee.

Credit:

(a) Such account with the par value of preferred stock sold to SBA by the licensee.

440—Stockholders' unrealized appreciation on loans and investments

This is a credit balance account and will represent the amount by which the licensee's Board of Directors/General Partner(s) has valued loans and investments above cost of such securities.

Debit:

(a) With decrease in amount of appreciation resulting from decline in fair value of securities held.

(b) With amount of appreciation attributable to securities sold or disposed of otherwise.

Credit:

(a) With amount of such appreciation recognized.

(b) With amount of increase in such appreciation recognized.

(See account Nos. 171, 186, 192, 195, 198, 205, 211, and 222.)

NOTE: In the case of distributions in kind to stockholders, this account will be debited with an amount not less than the amount of unrealized gain reported on the most recent 468 for the asset being distributed. The offsetting credit will be to account No. 450, Non-cash gains.

445—Stockholders' unrealized depreciation on loans and investments

This is a debit balance account and will represent the amount by which the licensee's Board of Directors has valued loans and investments below cost of such securities.

Debit:

(a) With amount of "depreciation" of loans and investments recognized.

(b) With amount of increase in such depreciation recognized.

Credit:

(a) With decrease in the amount of depreciation resulting from increase in fair value of securities held.

(b) With amount of depreciation attributable to securities sold or disposed of otherwise.

(See account Nos. 172, 187, 193, 196, 199, 203, 206, 212 and 223.)

448—Stockholders' estimated taxes on net unrealized gain (loss) on securities held

This is a debit balance account that will represent the provision for income taxes on net unrealized appreciation (amount by which the Board of Directors valuation of all securities exceeds cost). As the valuation of securities changes, the provisions for taxes will change.

Debit:

(a) With provisions for taxes established on net unrealized gain.

(b) With increases in provisions for taxes.

Credit:

(a) With established provision for taxes attributable to securities sold or disposed of otherwise.

(b) With decrease in provision established.

(See account No. 380.)

450—Stockholders' non-cash gains on sale of securities

This is a credit balance account and represents gains realized on sale of securities that have not been converted to cash. While considered to be undistributed earnings, amounts in this account will not be available for distribution or capitalized by corporate action. Therefore, such amounts are considered restricted undistributed earnings realized.

Debit:

(a) With amount of cash collected of such non-cash gains previously recognized.

(b) With amount of non-cash gains written off or disposed of otherwise.

(c) With the amount previously credited to this account from stockholders' unrealized appreciation on loans and investments.

Credit:

(a) With amounts of non-cash gain when the securities generating such gain are sold.

(b) With the amount of unrealized gain on the asset being distributed. This is the amount debited to account No. 440.

NOTE: It is recommended that individual records be maintained for each non-cash gain realized.

(See account Nos. 462, 220, 579 and 709.)

451—Stockholders' undistributed net realized earnings

This is a credit balance account and represents the cumulative balance of periodic net investment income including realized gain (loss) on securities sold, less dividend distributions whether cash, stock, or cost portions of dividends in kind. Non-cash gain on sale of securities are included in account No. 450.

Debit:

(a) At the end of the fiscal year, with any debit balance in account No. 460 reflected in the profit and loss summary account, and/or the realized gain and loss summary account No. 461.

(b) With amount of dividends, other than stock dividends declared payable out of undistributed net realized earnings by the company's Board of Directors.

(c) With amount of stock dividends, at a per share value representing the higher of fair value existing at the time that the dividend is declared, which are declared by the company's Board of Directors and paid out of undistributed net realized earnings.

(d) With appropriate amount of loss on treasury stock sold which was acquired through purchase, representing the excess of such loss over the total of credits residing in paid-in surplus, account No. 420, relating to previous gains on treasury stock sold or retirement of capital stock at amounts less than the amounts previously paid in with respect thereto.

(e) With appropriate amount paid by the company in excess of par plus initial premium received on the type and class of shares of capital stock retired.

Credit:

(a) At end of the fiscal year, with the credit balances of the profit and loss summary account, No. 460 and the realized gain and loss summary account, No. 461.

(See account Nos. 450, 460, 461 and 462.)

460—Stockholders' profit and loss summary

This account will be used as a clearing account through which all income and expense accounts on the books of the company will be closed.

Debit:

(a) At end of the fiscal year, with the debit balance of all expense and income accounts.

(b) At the end of the year with any credits arising from investments in management service subsidiaries or unincorporated businesses reported on the equity method of accounting.

(c) At the end of the fiscal year, with the credit balance of the account (transfer to undistributed net realized earnings—account No. 451).

Credit:

(a) At the end of the fiscal year, with the credit balances of all income and expense accounts.

(b) At the end of the year, by means of a journal entry, credit profit and loss summary with the amount of cash received from a management services subsidiary and/or unincorporated business which is not in excess of amounts previously charged to Profit and Loss summary that were credited to account No. 463—Stockholders' non-cash income from investments reported on the Equity Method of Accounting.

(c) At the end of the fiscal year, with the debit balance of the account (transfer to undistributed net realized earnings—account No. 451).

(See account No. 451.)

461—Stockholders' realized gain and loss summary in cash

This account will be used as a clearing account through which all accounts for realized gains and losses on investments on the books of the company will be closed.

Debit:

(a) At the end of the fiscal year, with the balance of all accounts for losses on investments.

(b) At the end of the fiscal year, with the credit balance of the account (transfer to retained earnings).

Credit:

(a) At the end of the fiscal year, with the balance of all accounts for gains on investments.

(b) At the end of the fiscal year, with the debit balance of the account (transfer to retained earnings).

(See account No. 451.)

462—Stockholders non-cash realized gain summary

This account will be used as a clearing account through which all accounts for non-cash realized gains on investment on the books of the company will be closed.

Debit:

(a) At the end of the fiscal year, with the credit balance of the account (transfer to non-cash gains on sale of securities)—account No. 450.

Credit:

(a) At the end of the fiscal year, with the amounts of non-cash gains on investments sold during the period and recognized in accounts 572 through 579.

(See account Nos. 450 and 461.)

463—Stockholders non-cash income from investments reported on the Equity Method of Accounting

This account will be used as a clearing account for income from any investment being reported on the Equity Method of Accounting rather than on the Value Method of Accounting. Generally this will be from investments in management services subsidiaries and/or investments in unincorporated small businesses concerns. Licensee's losses will not be reported in this account.

Debit:

(a) At the end of the fiscal year by a journal entry debit with the amount of cash received from investments reported on the Equity Method of Accounting but not in excess of amounts previously credited to the account from account 460 on the same investment.

Credit:

(a) At the end of the fiscal year credit with the amount of the licensee's share of income from investments reported on the Equity Method of Accounting.

Note: It is suggested that subsidiary records be kept of each investment being reported on the Equity Method of Accounting. Income from each investment is to be treated as a separate item.

Losses are not reported through this account but remain in account 460.

465—Partners' profit and loss summary

This account will be used as a clearing account through which all income and expense accounts on the books of the company will be closed.

Debit:

(a) At the end of the fiscal year, with the debit balance of all expense and income accounts.

(b) At the end of the fiscal year with any credit arising from management services investments or unincorporated businesses reported on the Equity Method of Accounting.

(c) At the end of the fiscal year, with the credit balance (transfer to the appropriate partners' undistributed net realized earnings account, i.e., account 493—Corporate General Partners' undistributed net realized earnings, 494—Individual General Partners' undistributed net realized earnings and 496—Limited Partners' undistributed net realized earnings.)

Credit:

(a) At the end of the fiscal year, with the credit balance of all income and expense accounts.

(b) At the end of the fiscal year, by means of a journal entry, credit profit and loss summary with the amount of cash received from a management services investment and/or unincorporated business which is not in excess of amounts previously charged to Profit and Loss Summary that were credited to Account 486—Partners Non-cash Income from Investment Reported on the Equity Method of Accounting.

(c) At the end of the fiscal year, with the debit balance of the account (transfer to the appropriate partners' Undistributed net realized earnings, i.e., 493, 494 and 496.

466—Partners' realized gain and loss summary-in cash

This account will be used as a clearing account through which all accounts for realized gains and losses on investments on the books of the company will be closed.

Debit:

(a) At the end of the fiscal year, with the balances of all accounts for losses on investments.

(b) At the end of the fiscal year, with the credit balance of the account (transfer to the appropriate partners' undistributed net realized earnings, i.e., 493, 494, and 496).

Credit:

(a) At the end of the fiscal year, with the balances of all accounts for gains on investments.

(b) At the end of the fiscal year, with the debit balance of the account (transfer to the appropriate partners' undistributed net realized earnings, i.e., 493, 494, and 496).

467—Partners' non-cash realized gain summary

This account will be used as a closing account through which all accounts for realized gains and losses on investments on the books of the company will be closed.

Debit:

(a) At the end of the fiscal year, with the credit balance of the account (transfer to the appropriate partners' non-cash gains on sale of securities, i.e. 491—Corporate General Partners' non-cash gain on sale of securities, 492—Individual General Partners' non-cash gain sale of securities, and 495—Limited Partners non-cash gain on sale of securities.

Credit:

(a) At the end of the fiscal year, with the amounts of non-cash gains on investments sold during the period and recognized in accounts 572 through 579.

468—Partners' non-cash income from investments reported on the Equity Method of Accounting

This account will be used as a clearing account for income from any investment being reported on the Equity Method of Accounting rather than on the Value Method of Accounting. Generally this will be from investments in management service investments and/or investments in unincorporated small business concerns. Licensee's losses will not be reported in this account.

Debit:

(a) At the end of the fiscal year by a journal entry, debit with the amount of cash received from investments reported on the Equity Method of Accounting but not in excess of amounts previously credited to the account from account 465.

Credit:

(a) At the end of the fiscal year credit with the amount of the licensee's share of income from investments reported on the Equity Method of Accounting.

NOTE 1: It is suggested that subsidiary records be kept of each investment being reported on the Equity Method of Accounting. Income from each investment is to be treated as a separate item.

Losses are not reported through this account but remain in account 465.

NOTE 2: This account should be divided into 468.1 for general partners and 468.2 for limited partners.

470—General Partners' Permanent Capital Contribution Summary

This is a summary account reflecting the balances of all general partners capital contributions. The credit balance in this account represents the amount of general partners' capital contributions that is a component in the computation of regulatory capital for leverage and overline purposes.

471—Corporate General Partners' Permanent Capital Contribution

This account respects the amount of the corporate general partners' capital contribution available for computation of regulatory capital.

Debit:

(a) Debit with the amount of any withdrawal during the fiscal period of capital contributions available for leverage.

Credit:

(a) Credit with the amount of additional cash contributed to the general partners' permanent capital contribution that is available for SBA leverage purposes.

(b) Credit with the amount transferred from account 493—Corporate General Partners' undistributed net realized earnings to increase the amount of capital available for SBA leverage and overline purposes.

NOTE 1.—This account performs the same function for a partnership licensee as a capital stock account performs for a corporate licensee. It represents capital available for leverage purposes, subject to certain regulatory adjustments.

NOTE 2.—This account performs an additional function for the partnership licensee. The credit balance in this account may be used to determine the percent of interest a corporate general partner has in the following items: (a) general partners' unrealized appreciation (depreciation), (b) general partners non-cash income from investments reported on the Equity Method of Accounting, (c) general partners' non-cash gain on sale of securities and (d) general partners undistributed net realized earnings.

NOTE 3.—Usually there is no relationship between the amount of capital contributed by general partners to the total partnership capital and the general partners' share of profits, losses and gains on securities. The ratio of the general partners' share of profits and gains is determined by the partnership agreement.

472—Individual General Partners' Permanent Capital Contribution

This account corresponds to account 471.

Debit:

(a) Debit with the amount of any withdrawals during the fiscal period of capital contributions available for leverage.

Credit:

(a) Credit with the amount of additional cash contributed to general partners' capital contribution that is available for computation of regulatory capital.

(b) Credit with the amount transferred from account 494—individual general partners undistributed net realized earnings to increase the amount of capital available for SBA leverage and overline purposes.

NOTE 1.—See notes 1, 2, and 3 to account 471.

NOTE 2.—It is suggested that subsidiary records be kept for each general partner.

475—Limited Partners Capital Permanent Contribution Summary

This is a summary amount reflecting the balance of all limited partners capital contributions. The credit balance in this account represents the amount of limited partners capital contributions that is available for computation of regulatory capital.

NOTE: This account performs the same function for limited partners as account 470 performs for general partners.

476—Limited Partners Permanent Capital Contribution

This account performs the same function for limited partners that accounts 471 and 472 perform for general partners.

Debit:

(a) Debit with the amount of any withdrawals during the fiscal period of capital contributions available for computation of regulatory capital.

Credit:

(a) Credit with the amount of additional cash contributed to limited partners' permanent capital contribution that is available for computation of regulatory capital.

(b) Credit with the account transferred from account 496—Limited Partners Undistributed Net Realized Earnings to increase the amount of capital available for computation of regulatory capital.

NOTE 1: The same rules apply to limited partners as apply to general partners. See Notes 1, 2, and 3 to account 471.

NOTE 2:It is suggested that subsidiary records be kept for each limited partner.

481—Corporate General Partners' Unrealized Appreciation on Loans and Investments

This is a credit balance account representing the corporate general partners' share of the amount by which the general partner(s) has valued loans and investments above the cost of such securities.

Debit:

(a) With the decrease in the amount of appreciation resulting from the decline in fair value of securities held.

(b) With the amount of appreciation attributable to securities sold or disposed of otherwise.

Credit:

(a) With the amount of such appreciation recognized.

(b) With the amount of increase in such appreciation recognized.

(See account Nos. 171, 186, 192, 195, 198, 205, 211, and 222.)

482—Individual General Partner(s) Unrealized Appreciation on Loans and Investments

This is a credit balance account representing the individual general partners' share of the amount by which the general partner(s) has valued loans and investments above the cost of such investments.

Debit:

(a) With the decrease in the amount of appreciation resulting from the decline in fair value of securities held.

(b) With the amount of appreciation attributable to securities sold or disposed of otherwise.

Credit:

(a) With the amount of such appreciation recognized.

(b) With the amount of increase in such appreciation recognized.

(See account Nos. 171, 186, 192, 195, 198, 205, 211 and 222.)

483—Corporate General Partners' Depreciation on Loans and Investments

This is a debit balance account and will represent the corporate general partners share of the amount by which the licensee's general partner(s) has valued loans and investments below the cost of such securities.

Debit:

(a) With the amount of "depreciation" of loans and investments recognized.

(b) With the amount of increase in such depreciation recognized.

Credit:

(a) With the decrease in the amount of depreciation resulting from the increase in fair value of securities held.

(b) With the amount of depreciation attributable to securities sold or disposed of otherwise.

(See account Nos. 172, 187, 193, 196, 199, 203, 206, 212 and 222.)

484—Individual General Partners' Depreciation on Loans and Investments

This is a debit balance account and will represent the individual general partners' share of the amount by which the licensee's general partner(s) has valued loans and investments below the cost of such securities.

Debit:

(a) With the amount of "depreciation" of loans and investments recognized.

(b) With the amount of increase in such depreciation recognized.

Credit:

(a) With the decrease in the amount of depreciation resulting from the increase in fair value of securities held.

(b) With the amount of depreciation attributable to securities sold or disposed of otherwise.

(See account Nos. 172, 187, 193, 196, 199, 203, 206, 212, and 222.)

485—Limited Partners Unrealized Appreciation on Loans and Investments

This is a credit balance account and will represent the limited partners share of the amount by which the general partner(s) has valued loans and investments above the cost of such securities.

Debit:

(a) With the decrease in the amount of appreciation resulting from the decline in the fair value of securities held.

(b) With the amount of appreciation attributable to securities sold or disposed of otherwise.

Credit:

(a) With the amount of such appreciation recognized.

(b) With the amount of increase in such appreciation recognized.

(See account Nos. 171, 186, 192, 195, 198, 205, 211 and 222.)

486—Limited Partners Unrealized Depreciation on Loans and Investments

This is a debit balance account and will epresent the limited partners share of the mount by which the general partner(s) has alued loans and investments below the cost f such securities.

Debit:

(a) With the amount of "depreciation" of oans and investments recognized.

(b) With the amount of increase in such epreciation recognized.

Credit:

(a) With the Decrease in the amount of epreciation resulting from the increase in ir value of securities held.

(b) With the amount of depreciation at-ributable to securities sold or disposed of therwise.

(See account Nos. 172, 187, 193, 196, 199, 203, 206, 212 and 222.)

491—Corporate General Partners' Non-cash Gains on Sale of Securities

This is a credit balance account and represents the corporate general partners' share on gains realized on the sale of securities that have not been converted to cash. While considered to be undistributed earnings, the amounts in this account will not be available for distribution or capitalized by partnership action transferring amounts to Partners' Permanent Capital Contribution for SBA leverage. Therefore, such amounts are considered restricted undistributed earnings realized.

Debit:

(a) With the amount of cash collected from non-cash gains previously recognized.

(b) With the amount of non-cash gains written off or disposed of otherwise.

Credit:

(a) With the amounts of non-cash gain when the securities generating such gain are sold.

NOTE: It is recommended that individual records be maintained for each non-cash gain realized.

(See account Nos. 467, 220, 579, and 709.)

492—Individual General Partners' Non-cash Gain on Sale of Securities

This is a credit balance account that performs the same function for individual general partners as account 491 performs for corporate general partners.

Debit:

(a) With the amount of cash collected from non-cash gains previously recognized.

(b) With the amount of non-cash gains written off or disposed of otherwise.

Credit:

(a) With the amount of non-cash gain when the securities generating such gain are sold.

NOTE: It is recommended that individual records be maintained for each non-cash gain realized.

(See account Nos. 467, 220, 579, and 709.)

493—Corporate General Partners' Undistributed Net Realized Earnings

This is a credit balance account and represents the corporate general partners' share of the limited partnership's cumulative balance of periodic net investment income including realized gain (loss) on securities sold less partnership distributions whether cash, stock or in kind and less non-cash gain on sales of securities which are included in account 491.

Debit:

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(a) At the end of the fiscal year, with the corporate general partners' share of any debit balance in account (a) 465—Partners' profit and loss summary and/or (b) the debit balance in Account 466—Partners' realized gain and loss summary in cash.

(b) With the amount of distributions made to corporate general partners' whether cash, stock and/or in kind.

(c) With the amount transferred to corporate general partners' capital contribution account 471 for SBA leverage purposes.

Credit:

(a) At the end of the fiscal year with the corporate general partners' share of any credit balance in (a) account 465—Partners' profit and loss summary and/or (b) the credit balance in account 466—Partners' realized gain and loss summary in cash.

494—Individual General Partners' Undistributed Net Realized Earnings

This is a credit balance account and represents the individual general partners' share of the limited partnerships' cumulative balance of periodic net investment income including realized gain (loss) on securities sold less partnership distributions whether cash, stock or in kind and less non-cash gain on sales of securities which are included in account 492.

Debit:

(a) At the end of the fiscal year, with the individual general partners' share of any debit balance in account (a) 465—Partners' profit and loss summary and/or (b) the debit balance in 466—Partners' realized gain and loss summary in cash.

(b) With the amount of distributions made to individual general partners whether cash, stock and/or in kind.

(c) With the amount transferred to the individual general partners' capital contribution account 471 for SBA leverage purposes.

Credit:

(a) At the end of the fiscal year, with the individual general partners' share of any credit balance in (a) account 465—Partners' profit and loss summary and/or (b) the credit balance in account 466—Partners' realized gain and loss summary in cash.

495—Limited Partners' Non-cash Gains On Sale of Securities

This is a credit balance account and represents the limited partners' share of gains realized on the sale of securities that have not been converted to cash. While considered to be undistributed earnings, the amount in this account will not be available for distribution or capitalized by partnership action transferring amounts to partners' capital contribution for SBA leverage. Therefore, such amounts are considered restricted undistributed earnings realized.

Debit:

(a) With the amount of cash collect from non-cash gains previously recognized

(b) With the amount of non-cash ga written off or disposed of otherwise.

Credit:

(a) With the amounts of non-cash ga when the securities generating such g are sold.

NOTE: It is recommended that individu records be maintained for each non-ca gain realized.

(See account Nos. 467, 220, 579, and 70

496—Limited Partners' Undistributed Ne Realized Earnings

This is a credit balance account and repr sents the limited partners' share of the censee's cumulative balance of periodic n investment income including realized ga (loss) on securities sold less partnership d tributions whether cash, stock or in kin and less non-cash gain on sales of securiti which are included in account 495.

Debit:

(a) At the end of the fiscal year, with th limited partners' share of any debit balanc in (a) account 465—Partners' profit and lo summary and/or (b) the debit balance in a count 466—Partners' realized gain and lo summary in cash.

(b) With the amount of distribution made to limited partners whether cas stock and/or in kind.

(c) With the amount transferred to limi ed Partners' capital contribution accou 476 for SBA leverage purposes.

Credit:

(a) At the end of the fiscal year, with th limited partners' share of any credit balanc in (a) account 465—Partners' profit and lo summary and/or (b) account 466—Partner realized gain and loss summary in cash.

INCOME ACCOUNTS

500—Commitment income

This account will represent the amount o income earned on commitments to smal business concerns for loans and equity securities. This account, on the books of th "participating" company, will include th amount of commitment income on deferre participations.

Debit:

(a) At the end of the fiscal year, with th balance of account (transfer to profit an loss summary).

Credit:

(a) With amount of income earned o commitments and deferred participations.

NOTE 1: A deferred participation is define as a commitment under a participatio agreement whereby the "participating company will make funds available on a deferred basis to the "initiating" company connection with the latter's financing of, or commitment to finance, a small business concern, or in connection with an "initiating" small business investment company's acquisition of loans or equity securities from other such companies.

NOTE 2: Recording as income in this account of accrued commitment fees receivable should be discontinued with respect to any small business concern which is in bankruptcy, or on the verge thereof, or otherwise considered to be insolvent. The amounts in question should be credited as deferred income in account No. 383—Other deferred credits, pending determination of the appropriate accounting. In less serious situations, when the small business concern or the fair value of its debt or equity instrument held by the company, as determined by the Board of Directors, is less than cost, or recovery thereon is doubtful, an addition to the allowance for uncollectible notes and accounts receivable should be made in an amount equivalent to the accrued commitment fees taken into income in this account, or as an alternative, the commitment income should be deferred in account No. 383 as above indicated.

(See account Nos. 141 and 142.)

510—Interest on invested idle funds

This account will represent the amount of interest earned on (1) time certificates of deposit in banks which are members of the Federal Deposit Insurance Corporation, (2) U.S. Government obligations, direct and fully guaranteed, owned by the company, and (3) funds of the company in insured savings accounts in institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation.

Debit:

(a) At the end of the fiscal year, with the balance of account (transfer to profit and loss summary).

Credit:

(a) With amount of interest earned on invested idle funds.

(See account Nos. 130 through 137, 143 and 144.)

512—Interest on loans

This account will represent the amount of interest earned on loans to small business concerns.

Debit:

(a) At the end of fiscal year, with the balance of account (transfer to profit and loss summary).

Credit:

(a) With amount of interest earned on loans outstanding to small business concerns.

NOTE: Accrual of interest receivable should be discontinued with respect to any loan to a small business concern which is in bankruptcy, or on the verge thereof, or otherwise considered to be insolvent. Any interest payment received from such a debtor should not be credited to this account as interest income, but should be either credited as payments on principal of the debt or credit as deferred income in account No. 383—Other deferred credits, pending determination of the appropriate accounting. In less serious situations, when interest receivable is accrued under circumstances in which the financed small business concern is in default to the licensee, or the fair value of the loan as determined in good faith by the Board of Directors is less than cost of recovery thereon is doubtful, an addition to the allowance for uncollectible interest receivable should be made in an amount equivalent to the accrued interest receivable taken into income in this account, or, as an alternative, the interest income should be deferred in account No. 383 as above indicated.

(See accounts Nos. 143, 144, 170 and 173.)

516—Interest on debt securities

This account will represent the amount of interest earned on debt securities of small business concerns owned by the company pursuant to section 304 of the Small Business Investment Act of 1958, as amended.

Debit:

(a) At the end of the fiscal year with the balance of account (transfer to profit and loss summary)

Credit:

(a) With amount of interest earned on debt securities owned.

NOTE: Accrual of interest received should be discontinued with respect to any debt security of a small business concern which is in bankruptcy, or on the verge thereof, or otherwise considered to be insolvent. Any interest payments received from such a debtor should not be credited to this account as interest income, but should be either credited as payments on principal of the debt or credited as deferred income in account No. 383—Other deferred credits, pending determination of the appropriate accounting. In less serious situations, when interest receivable is accrued under circumstances in which the financed small business concern is in default to the licensee, or the fair value of the debt security as determined in good faith by the Board of Directors is less than cost, or recovery thereon is doubtful, an addition to the allowance for uncollectible interest receivable should be made in an amount equivalent to the accrued interest receivable taken into income in this account, or, as an alternative, the interest income should be deferred in account No. 383 as above indicated.

(See accounts Nos. 143, 144, 180, 184 and 188.)

520—Interest income—other

This account will represent the amount of interest earned on miscellaneous notes receivable, funds in escrow, and interest-bearing receivables not otherwise classified.

Debit:

(a) At the end of the fiscal year with the balance of account (transfer to profit and loss summary)

Credit:

(a) With amount of interest earned on such receivables.

(See account Nos. 140, 143, and 267.)

532—Management service fees

This account will represent the amount of fees charged for management services rendered to small business concerns and other small business investment companies pursuant to section 107.601 of the Small Business Administration Rules and Regulations.

Debit:

(a) At the end of the fiscal year, with the balance of account (transfer to profit and loss summary).

Credit:

(a) With amount of such fees charged.

NOTE: Recording as income in this account of accrued management service fees receivable should be discontinued with respect to any small business concern which is in bankruptcy, or on the verge thereof, or otherwise considered to be insolvent. The amounts in question should be credited as deferred income in account No. 383—Other deferred credits, pending determination of the appropriate accounting. In less serious situations, when the fair value of the financed concern's debt or equity instruments held by the company, as determined by the Board of Directors, is less than cost, or recovery thereon is doubtful, an addition to the allowance for uncollectible notes and accounts receivable should be made in an amount equivalent to the accrued management consulting service fees taken into income in this account, or, as an alternative, the management consulting service income should be deferred in account No. 383 as above indicated.

(See account Nos. 140, 141, and 142.)

534—Investigation and service fees charged other lenders

This account will represent the amount of fees charged for investigation and services rendered to banks or other lenders or investors, pursuant to section 308(a) of the Small Business Investment Act of 1958, as amended. The account will include compensation for financial services rendered in connection with participations sold.

Debit:

(a) At the end of the fiscal year, with t balance of account (transfer to profit a loss summary).

Credit:

(a) With amount of such fees charged.

(See accounts Nos. 140, 141 and 142.)

536—Application and appraisal fees

This account will represent the amount fees charged for application, appraisal, vestigation, and related services rendered small business concerns.

Debit:

(a) At the end of the fiscal year, with th balance of account (transfer to profit an loss summary).

Credit:

(a) With amount of such fees charged.

(See account Nos. 173 and 188 and "Note of account Nos. 140, 141 and 532.)

540—Dividends on capital stock of SBCs

This account will represent the amount income from dividends on capital stock small business concerns.

Debit:

(a) At the end of the fiscal year, with th balance of account (transfer to profit an loss summary).

Credit:

(a) With amount of income from suc dividends.

(See account No. 145.)

541—Sharings in income or revenue of SBC

This account will represent the amount sharing or participations in the income revenue of small business concerns whic the company has financed by means loans or debt securities.

Debit:

(a) At the end of the fiscal year, with th balance of account (transfer to profit an loss summary).

Credit:

(a) With amount of such sharings.

(See account Nos. 140, 141 and 145.)

542—Non-cash income from investments reported on equity method of accounting

This account is a summary account of income and losses from investments quired to be reported on the Equity Metho of Accounting. The sources of entries will primarily from any of the following source

1. Corporate licensees' management ser ice subsidiary.
2. Limited partnerships' investment in management services company.
3. Investments in unincorporated sma business concerns.

It is important that separate records kept of each source of investments reporte on the Equity Method of Accounting sin losses and gains are not reported in the same manner.

Debit:

(a) At the end of the fiscal year with the amounts of all gains, which will be credited to account 463—Stockholder non-cash income from investments reported on the Equity Method of Accounting or to account 468—Partners' non-cash income from investments reported on the Equity Method of Accounting.

(b) With the amount of losses resulting from investments to be reported on the Equity Method of Accounting.

Credit:

(a) With the amount of income from investments to be reported on the Equity Method of Accounting.

(b) With the amount of losses from investments to be reported on the Equity Method of Accounting. If the licensee is a corporation the offsetting debit will be to account 460. If the licensee is a limited partnership the offsetting debit will be to account No. 465.

570—Gain on U.S. Governemnt securities

This account will represent the amount of gain on the sale or other disposition of U.S. Government obligations, direct and fully guaranteed, carried in account No. 130.

Debit:

(a) At the end of the fiscal year, with the balance of account (transfer to account 461 or 462).

Credit:

(a) With amount of gain on such securities sold or disposed of otherwise.

NOTE: Increase in value over cost of United States Treasury bills, which are issued at a discount and are noninterest bearing, will not be reflected in this account but will be credited to account No. 510—Interest on invested idle funds, with concurrent debit to account No. 143—Accrued interest receivable.

571—Gain on loans.

This account will represent the amount of gain on the sale or other disposition of loans of small business concerns carried in account No. 170, and will include recoveries on loan losses previously charged to the loss account.

Debit:

(a) At the end of the fiscal year, with the balance of account (transfer to account 461 or 462)

Credit:

(a) With amount of gain on such loans sold or disposed of otherwise.

(b) With amount collected on portions of loans previously charged to the loss account.

(See accounts Nos. 383 and 701.)

572—Gain on debt securities

This account will represent the amount of gain on the sale or other disposition of debt securities of small business concerns carried in accounts Nos. 180 and 184, and will include recoveries on debt security losses previously charged to the loss account.

Debit:

(a) At the end of the fiscal year, with the balance of account (transfer to account 461 or 462).

Credit:

(a) With amount of gain on such debt securities sold or disposed of otherwise.

(b) With amount collected on portions of debt securities previously charged to the loss account.

(See account Nos. 383 and 702.)

574—Gain on capital stock of SBCs

This account will represent the amount of gain on the sale or other disposition of capital stock of small business concerns carried in accounts Nos. 190 and 191, and will include recoveries on capital stock losses previously charged to the loss account.

Debit:

(a) At the end of the fiscal year, with the balance of account (transfer to account 461 or 462).

Credit:

(a) With amount of gain on such capital stock sold or disposed of otherwise.

(b) With amount realized on capital stock of SBCs previously charged to the loss account.

(See account Nos. 383 and 704.)

575—Gain on equity interest of unincorporated concerns

This account will represent the amount of gain on the sale or other disposition of equity interests of unincorporated concerns carried in account 194 and will include recoveries of losses on equity interests of unincorporated concerns previously charged to the loss account.

Debit:

(a) At the end of the fiscal year, with the balance of account (transfer to account 461 or 462).

Credit:

(a) With amount of gain on such equity interests sold or disposed of otherwise.

(b) With amount realized on equity interests previously charged to the loss account.

576—Gain on warrants, options, and other stock rights acquired from SBCs

This account will represent the amount of gain on the sale or other disposition of warrants, options, and other stock rights acquired from SBCs, and will include recoveries on stock rights losses previously charged to the loss account.

Debit:

(a) At the end of the fiscal year, with the balance of account (transfer to account 461 or 462).

Credit:

(a) With amount of gain on such warrants, options, and other stock rights acquired from SBCs sold or disposed of otherwise.

(b) With amount realized on warrants, options, and other stock rights previously charged to the loss account.

(See account Nos. 197, 383 and 706, and memorandum record No. NA-10.)

577—Gain on assets acquired in liquidation of portfolio securities

This account will represent the amount of gain on the sale or other disposition of assets acquired in liquidation of portfolio securities of small business concerns carried in accounts Nos. 200, and 204, and will include recoveries on losses on assets acquired in liquidation previously charged to the loss account.

Debit:

(a) At the end of the fiscal year, with the balance of account (transfer to account 461 or 462).

Credit:

(a) With amount of gain on such assets acquired in liquidation of portfolio securities sold or disposed of otherwise.

(b) With amount realized on assets in liquidation of portfolio securities previously charged to the loss account.

(See account Nos. 383 and 707.)

578—Gain on Operating Concerns Acquired

This account will represent the amount of gain on the sale or other disposition of investments in operating concerns acquired and will include recoveries on losses previously charged to the related loss account.

Debit:

(a) At the end of the fiscal year, with the balance of account (transfer to account 461 or 462).

Credit:

(a) With amount of gain on such assets sold or disposed of otherwise.

(b) With amount realized on other assets previously charged to the loss account.

(See account Nos. 210, 221, 383, and 708.)

579—Gain on other assets

This account will represent the amount of gain on the sale or other disposition of assets not specifically provided for in other accounts, and will include recoveries on losses on other assets previously charged to the loss account.

Debit:

(a) At the end of the fiscal year, with the balance of account (transfer to account 461 or 462).

Credit:

(a) With amount of gain on such assets sold or disposed of otherwise.

(b) With amount realized on other assets previously charged to the loss account.

(See accounts Nos. 220, 221, 383, and 70

582—Income from assets acquired in liquidation of portfolio securities

This account will represent the amount of income earned on assets acquired in liquidation of portfolio securities, including the operation of properties, carried in accounts Nos. 200, 204.

Debit:

(a) At the end of the fiscal year, with the balance of account (transfer to profit and loss summary).

Credit:

(a) With amount of such income earned.

NOTE: In instances when a liquidating agent is employed to supervise the disposition of the assets, appropriate subsidiary accounts should be maintained by the agent. Cash collected from the sale of assets by the liquidating agent should be remitted immediately to the company. The company should maintain a local depository bank account, in which all receipts of the agent are deposited when direct remittances to the company are not feasible. Deposit balances in this account should be subject to withdrawal by check only by the company and should be reflected on the company's records in the same manner as other bank accounts.

Any advances to a liquidating agent for expenses incident to the operation or the disposition of assets acquired in the liquidation of portfolio securities should be charged to account No. 230—Prepaid expenses.

584—Other income

This account will represent the income earned not specifically provided for in other accounts.

Debit:

(a) At the end of the fiscal year, with the balance of account (transfer to profit and loss summary)

Credit:

(a) With amount of such income earned.

EXPENSE ACCOUNTS

600—Commitment expense

This account will represent the amount of commitment expense on commitments from lending institutions.

On the books of the "initiating" company, this account also will include the amount of commitment expense on deferred participations.

Debit:

(a) With amount of expense incurred on commitments and deferred participations.

Credit:

(a) At the end of the fiscal year, with the balance of account (transfer to profit and loss summary).

NOTE: A deferred participation is defined as a commitment under a participation agreement whereby the "participating" company will make funds available on a deferred basis to the "initiating" company in connection with the latter's financing of, or commitment to finance, a small business concern, or in connection with an "initiating" small business investment company's acquisition of loans or equity securities from other such companies.

(See account No. 340.)

610—Interest on obligations payable to SBA

This account will represent the amount of interest expense accrued on obligations payable to the Small Business Administration for funds borrowed.

Debit:

(a) With amount of such interest accrued.

Credit:

(a) At the end of the fiscal year, with the balance of account (transfer to profit and loss summary).

(See account Nos. 300, 301 and 350.)

622—Interest on obligations payable to other than SBA

This account will represent the amount of interest expense accrued on obligations payable to other than the Small Business Administration for funds borrowed.

Debit:

(a) With amount of such interest accrued.

Credit:

(a) At the end of the fiscal year, with the balance of account (transfer to profit and loss summary).

(See accounts Nos. 310, 311, 312, 313, 320 and 350.)

642—Stock record and other financial expenses

This account will represent the amount of charges to the company by transfer agent and the registrar for services rendered in connection with the issuance and transfer of company's capital stock, and will include other financial expenses not provided for elsewhere.

Debit:

(a) With amount of such interest incurred.

Credit:

(a) At the end of the fiscal year, with the balance of account (transfer to profit and loss summary).

(See account No. 340.)

650-679—Operating expenses

The accounts under this caption will represent the amounts of operating expenses incurred.

Debit appropriate account:

(a) With amount of operating expenses incurred.

Credit appropriate account:

(a) At the end of the fiscal year, with the balance of account (transfer to profit and loss summary).

650—Advertising and promotional costs

This account will represent the cost of advertising and promoting the company's services, including the cost of entertaining prospective borrowers and clients.

651—Appraisal and investigation costs

This account will represent the amount of charges made by outside firms and individuals for appraisal, investigation, and related services rendered to the company.

652—Auditing and examination costs

This account will represent the amount of charges for auditing, examination, and bookkeeping services rendered by accountants not on the company's payroll, and charges for services rendered by SBA examiners.

653—Communications

This account will represent telephone, telegraph, and postage expense.

654—Cost of space occupied

This account will represent the cost of space occupied such as rent, alterations, light, heat, power, janitor service, maintenance and repair expense on buildings, furniture, and equipment (other than automobiles), etc.

655—Depreciation of corporate premises owned, furniture, equipment and automobiles

This account will represent the amount of provision applicable to the fiscal year for depreciation of the buildings and other depreciable improvements of corporate premises owned and used as the company's office quarters. The account also will include the amount of provision applicable to the fiscal year for depreciation of furniture, equipment and automobiles owned by the company.

656—Amortization of leasehold improvements

This account will represent the amortization of leasehold improvements.

657—Directors, stockholders' or partners' meetings costs

This account will represent directors' fees and travel expense for attendance at directors' and stockholders' or partners' meetings. The account also will include the cost of holding stockholders' or partners' meetings, such as rental of the meeting hall and related expenses.

658—Insurance

This account will represent fire, theft, employee group life insurance, and other insurance expense, including fidelity bond, premiums and insurance on automobiles. The portion, if any, of employee group life insurance premiums withheld from salaries or received from employees will be reflected in account No. 378. Insurance premiums to be amortized will be charged to account No. 230.

659—Management services fees

This account will represent the amount of charges made by outside firms or individuals for management services provided to licensee pursuant to management agreement approved by SBA.

660—Investment advisor costs

This account will represent the amount of charges made by outside firms and individuals for furnishing consultation and advice to the company with respect to the desirability of investing in, purchasing, or selling loans, debt securities, and capital stock of small business concerns and other property.

661—Legal services

This account will represent the cost of legal services rendered to the company.

663—Salaries

This account will include the balance in subaccounts Nos. 663.1 and 663.2.

663.1—*Salaries of officers or partners*

This account will represent the salary cost of all officers/partners of the company, including directors' salaries, if any, but not directors' fees for attendance at meetings.

663.2—*Salaries of employees*

This account will represent the salary cost of all employees other than officers/partners, including salaries of any temporary or part-time employees engaged for specific assignments.

664—Taxes, excluding income taxes

This account will represent the cost of all taxes, including those on corporate premises owned, motor vehicle, and personal property, social security taxes (company's portion), and other taxes charged to the co
pany, exclusive of income taxes.

665—Travel

This account will represent all travel
pense, including transportation charg
automobile maintenance, operating expen
meals, lodging, telephone, telegraph, a
other company costs incurred by office
and employees while in a travel status.

670—Employee benefits expense

This account will represent the cost
sumed by the company in contributing
funds providing for employee retireme
benefits and other types of employee ben
fits, except group life insurance. The po
tion, if any, of the cost of employee benefi
withheld from salaries or received from e
ployees will be reflected in account No. 37

672—Amortization of organization expens

This account will represent the amount
legal fees, promotional expense, stock certi
icate costs, incorporation fees, taxes, a
other related costs incurred in organizi
the company, which are charged to expen
(this account) as incurred or are transferr
to this account periodically through the a
ortization of organization costs establish
as an asset in account No. 266.

679—Miscellaneous operating expenses

This account will represent the amount
operating expenses not specifically provid
for in other accounts. There will be includ
expenses incurred in connection with du
subscriptions, donations, and similar item
charges made to the company for custodi
or safekeeping services in connection wi
its portfolio securities; and bank servi
charges, exchange on checks, protest fe
etc., and the cost of office supplies such
stationery, accounting forms, binders, pe
cils, etc.

680—Estimated losses on receivables

This account will represent the amount
estimated losses applicable to the fiscal ye
on notes and accounts receivable, and inte
est receivable.

Debit:

(a) With amount of such estimated loss
incurred.

Credit:

(a) At the end of the fiscal year, with t
balance of account (transfer to profit a
loss summary).

700—Loss on U.S. Government securities

This account will represent the amount
loss on the sale or other disposition
United States Government obligatio

direct and fully guaranteed, carried in account No. 130-135.

Debit:

(a) With amount of loss on such securities sold or disposed of otherwise.

Credit:

(a) At the end of the fiscal year, with the balance of account (transfer to account No. 460 or 462).

(See account No. 570.)

701—Loss on loans

This account will represent the amount of loss on the sale or other disposition of loans of small business concerns carried in account No. 170.

Debit:

(a) With amount of loss on such loans written down or sold or disposed of otherwise.

Credit:

(a) At the end of the fiscal year, with the balance of account (transfer to realized gain and loss summary—account No. 461).

(See account No. 571.)

702—Loss on debt securities

This account will represent the amount of loss on the sale or other disposition of debt securities of small business concerns carried in accounts Nos. 180 and 184.

Debit:

(a) With amount of loss on such debt securities written down or sold or disposed of otherwise.

Credit:

(a) At the end of the fiscal year, with the balance of account (transfer to realized gain and loss summary—account No. 461).

(See account No. 572.)

704—Loss on capital stock of SBCs

This account will represent the amount of loss on the sale or other disposition of capital stock of small business concerns carried in accounts Nos. 190 and 191.

Debit:

(a) With amount of loss on such capital stock written down or sold or disposed of otherwise.

Credit:

(a) At the end of the fiscal year, with the balance of account (transfer to account No. 461).

(See account No. 574.)

705—Loss on equity interest of unincorporated concern

This account will represent the amount of loss resulting from sale or other disposition of equity interests of unincorporated concerns carried in account No. 194.

Debit:

(a) With amount of loss on such equity interest sold, written off, or disposed of otherwise.

Credit:

(a) At the end of the fiscal year, with the balance of account (transfer to account No. 461).

(See account No. 575.)

706—Loss on warrants, options, and other stock rights acquired from SBCs

This account will represent the amount of loss on the sale or other disposition of warrants, options, and other stock rights acquired from SBCs.

Debit:

(a) With amount of loss on such warrants, and other stock rights written down or sold or disposed of otherwise.

Credit:

(a) At the end of the fiscal year, with the balance of account (transfer to account No. 461).

(See account Nos. 197, 576, and memorandum record No. NA-10.)

707—Loss on assets acquired in liquidation of portfolio securities

This account will represent the amount of loss on the sale or other disposition of assets acquired in liquidation of portfolio securities of small business concerns carried in account No. 200, 204.

Debit:

(a) With amount of loss on such assets written down or sold or disposed of otherwise.

Credit:

(a) At the end of the fiscal year, with the balance of account (transfer to account No. 461).

(See account No. 577.)

708—Loss on Operating Concerns Acquired

This account will represent the amount of loss on the sale or other disposition of investments in operating concerns acquired.

Debit:

(a) With amount of loss on such assets or disposed of otherwise.

Credit:

(a) At the end of the fiscal year, with the balance of account (transfer to account No. 461).

(See account No. 578.)

709—Loss on other assets

This account will represent the amount of loss on the sale or other disposition of assets not specifically provided for in other accounts.

Debit:

(a) With amount of loss on such assets or disposed of otherwise.

Credit:

(a) At the end of the fiscal year, with the balance of account (transfer to account No. 461).

(See account No. 579.)

710—Expense on assets acquired in liquidation of portfolio securities

This account will represent the amount of expense incurred on assets acquired in liquidation of portfolio securities, including the operation and depreciation of properties, carried in account No. 204. The account also will include the amount of interest expense accrued on mortgages payable on assets acquired in liquidation of portfolio securities.

Debit:

(a) With amount of such expense incurred.

Credit:

(a) At the end of the fiscal year, with the balance of account (transfer to profit and loss summary—account No. 460).

NOTE: In instances when a liquidating agent is employed to supervise the disposition of the assets, appropriate subsidiary accounts should be maintained by the agent.

Cash collected from the sale of assets by the liquidating agent should be remitted immediately to the company. The company should maintain a local depository bank account, in which all receipts of the agent are deposited when direct remittances to the company are not feasible. Deposit balances in this account should be subject to withdrawal by check only by the company and should be reflected on the company's records in the same manner as other bank accounts.

Any advances to a liquidating agent for expenses incident to the operation of or in the disposition of assets acquired in the liquidation of loans and debt securities should be charged to account No. 230—Prepaid expenses.

715—Other expenses

This account will represent the amount of nonoperating expenses not specifically provided for in other accounts, including, on the books on the "participating" company, the amount of compensation expense for financial services received from "initiating" companies in connection with participations purchased.

Debit:

(a) With amount of such expenses incurred.

Credit:

(b) At the end of fiscal year, with the balance of account (transfer to profit and loss summary—account No. 460).

(See account No. 340.)

720—Income taxes—net income

This account will include the balances in subaccounts Nos. 720.1, 720.2, 720.3, etc.

720.1—*Federal income taxes—net income.*

This account will represent the amount of Federal income taxes applicable to net income for the current fiscal year.

Debt:

(a) With amount of such taxes accrued.

Credit:

(a) At the end of the fiscal year, with the balance of account (transfer to profit and loss summary—account No. 460).

720.2—*State income taxes—net income.*

This account will represent the amount of State income taxes applicable to net income for the current fiscal year.

Debit:

(a) With amount of such taxes accured.

Credit:

(a) At the end of the fiscal year, with the balance of account (transfer to profit and loss summary—account No. 460).

(See subaccount Nos. 354.1 and 354.2.)

722—Income taxes—net realized gain on investments

This account will include the balance in subaccount Nos. 722.1, 722.2, 722.3, etc.

722.1—*Federal income taxes—net realized gain on investments.*

This account will represent the amount of Federal income taxes applicable to net realized gain on investments for the current fiscal year.

Debit:

(a) With amount of such taxes accured.

Credit:

(a) At the end of the fiscal year, with the balance of account (transfer to realized gain and loss summary account 461 or 462).

(See subaccount No. 354.1.)

722.2—*State income taxes—net realized gain on investments.*

This account will represent the amount of State income taxes applicable to net realized gain on investments for the current fiscal year.

Debit:

(a) With amount of such taxes accrued.

Credit:

(a) At the end of the fiscal year, with the balance of account (transfer to realized gain and loss summary account 461 or 462).

(See subaccount No. 354.2.)

MEMORANDUM RECORDS

Nominal Assets

NA-10—*Stock purchase warrants or options on stock of SBCs.* This record will show the company's ownership of detachable stock purchase warrants or options on stock of SBCs, retained after the accompanying financing instruments have been disposed of, for which no consideration was given distinct from that surrendered for such financing instruments and for which no separate cost has otherwise been determined.

Each such detachable stock purchase warrant or option certificate should be entered in this record, upon detachment, at a nominal value of one dollar ($1.00). Upon sale of such a detached stock purchase warrant or option, upon exercise or expiration of rights conveyed by such a detached stock purchase warrant or option or upon the determination of a cost to be recorded for such a detached stock purchase warrant or option, the entry establishing such certificate in the memorandum records is to be discharged through an equivalent credit.

Debit:

(a) With nominal value of such detachable stock purchase warrants or options upon their detachment from capital stock certificates or debt securities.

Credit:

(a) With nominal value of such detachable stock purchase warrants or options upon exercise or expiration of rights conveyed by such warrant or option certificates.

(b) With nominal value of such detachable stock purchase warrants or options sold or disposed of otherwise.

(c) With nominal value of such detachable stock purchase warrants or options for which a separate cost has been established.

(See accounts Nos. 180, 190, and 197.)

CONTINGENT LIABILITIES

CL-15—*Commitments outstanding.* This record will show the amount of financing commitments made and outstanding to small business concerns, including commitments for loans and for the acquisition of small business concerns' capital stock and debt securities. This record also will show the amount of deferred participations. A deferred participation is defined as a commitment under a participation agreement whereby the "participating" company will make funds available on a deferred basis to the "initiating" company in connection with the latter's financing of, or commitment to finance, a small business concern, or in connection with an "initiating" small business investment company's acquisition of loans or equity securities from other such companies. When funds are advanced against commitments, appropriate entry will be made in this record.

CL-16—*Guarantees outstanding.* This record will show the amount for which the company is contingently liable under guarantees issued to lending institutions in connection with obligations of portfolio concerns under notes, debentures, or other evidences of indebtness, or short-term advances to such concerns.

CL-17—*Other contingent liabilities.* This record will show the amount of miscellaneous contingent obligations not otherwise classified.

OPTIONS ON COMPANY'S STOCK

OCS-1—*Options on company's stock.* This record will show details of outstanding options on the company's capital stock granted in lieu of salary or in payment for services actually rendered to the company. The following data will be included:

1. Identification of person or entity holding options.
2. Number of shares optioned.
3. Type and class of stock called for by options.
4. Dates of grant and of expiration of options.
5. Price or prices at which options exercisable, with dates they apply.
6. Fair market value, per share, of stock called for at date each option was granted.
7. Price of each option as percent of fair market value of optioned stock at date option was granted.
8. Provisions for termination of options in case of death of retirement of optionees, or other circumstances.
9. Details of authorization, shares reserved for, issuance, exercise, lapse, and forfeiture of options provided for under the company's stock option plan.

ACTUAL LOSS EXPERIENCE

AL-1—*Actual (realized) losses.* This record will show for each fiscal year, and also accumulatively, the amount of actual (realized) losses incurred through disposition, write-down, or write-off of loans and investments. Losses shall be stated in total for all loans and investments and also separately for loans; debt securities; capital stock of small business concerns; warrants; options, and other stock rights of small business concerns; assets acquired in liquidation of loans and debt securities; and amounts due from debtors on sale of assets acquired in liquidation of loans and debt securities. Losses realized shall be determined in relation to cost of the assets involved without regard to the existence or nonexistence of related allowances for losses.

WI—Worthless Investments Written Off.

PDA—Preferred Dividend Arrearages on Preferred Stock Sold SBA.

A memorandum account will be established showing:

(a) The amount of each arrearage

(b) The total amount of arrearage

(c) The number of arrearages

(d) The date the arrearages began.

The auditor will disclose the above information by an appropriate footnote.

[51 FR 30781, Aug. 28, 1986]

PART 108—LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

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LOANS UNDER SECTION 502

108.502 Statutory provision.
108.502-1 Section 502 loans.

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AUTHORITY: 15 U.S.C. 687(c), 695, 696, 697, 697a, 697b.

SOURCE: 38 FR 31813, Nov. 19, 1973, unless otherwise noted.

GENERAL

§ 108.1 Policy.

(a) As part of the Congressional policy to improve and stimulate the national economy in general, and the small business segment thereof in particular, by establishing a program to stimulate the flow of private equity capital and long-term loans for the sound financing of the operations, growth, expansion, and modernization of small business concerns, the Small Business Administration is authorized to make loans to State and local development companies which will further that policy. This policy shall be carried out in such manner as to insure the maximum participation of private financing sources. No such loan shall be made if the effect thereof will be to cause a substantial increase of unemployment in any area of the country.

(b) Financing provided under this part must demonstrate to SBA's satisfaction that it will result in significant impact on the community where the business or project is located and no adverse significant impact outside of the community (see § 108.8(f)(1) of this part). "Significant impact" may be demonstrated on the basis of—

(1) Jobs being created or retained which would not have been possible without such financing;

(2) Community economic development including diversification or stabilization of the economy within the community; or,

(3) Achieving a national objective such as: Increased productivity through the modernization of existing facilities necessary to retain jobs, expansion of exports, expansion of minority business development, assisting manufacturing firms (SIC Codes 20-49), and assisting businesses in labor surplus areas as listed by the U.S. Department of Labor in its publication "Area Trends". Loans made to acquire plants, as defined in § 108.2 of this part, shall be made in conformity with the same program objectives as set forth under § 108.503 (b) through (d) for this 503 program.

(c) The Government of the United States has declared that no person in the United States shall, on the grounds of race, color, religion, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (Title VI of the Civil Rights Act of 1964.) The President of the United States has also declared in Executive Orders 10925 of March 6, 1961 (26 FR 1977), No. 11114 of June 23, 1963 (28 FR 6485), and No. 11246 of September 24, 1965 as amended by No. 11375 of October 13, 1967 (32 FR 14303) that all qualified persons should be given equal employment opportunity without regard to race, color, religion, sex or national origin, when employed or seeking employment with Government contractors or with contractors performing under ederally assisted construction contracts, Recipients of financial assistance under this part are subject to the nondiscrimination requirements of the laws and policies referred to in this section.

[38 FR 31813, Nov. 19, 1973, as amended at 51 FR 20770, June 6, 1986; 52 FR 27675, July 23, 1987; 53 FR 10243, Mar. 30, 1988]

§ 108.2 Definitions.

For purposes of this part:

"501 loan" means a loan authorized under section 501 of the Small Business Investment Act of 1958, as amended.

"502 loan" means a loan authorized under section 502 of the Small Business Investment Act of 1958, as amended.

"503 Company" means a Development Company which meets the requirements of § 108.503-1 of this part and is certified by SBA to operate pursuant to section 503 of the Small Business Investment Act, 15 U.S.C. 697.

"503 Debenture" means a debenture issued by a 503 Company and guaranteed by SBA, as authorized under Section 503 of the Small Business Investment Act of 1958, as amended ("503 guaranty") for sale to the Federal Financing Bank, an agency of the U.S. Treasury.

"503 Loan" means a loan evidenced by a note or lease made to a Small Concern from the proceeds of a 503 Debenture.

"504 Debenture" means a debenture issued by a 503 Company on SBA Form 1504 and guaranteed by SBA for sale to private investors (see § 108.504), either individually or as part of a Pool which backs 505 Certificates.

"504 Loan" means a loan evidenced by a note (SBA Form 1505), made to a Small Business Concern from the proceeds of a 504 Debenture.

"505 Certificate" means a certificate of interest issued by SBA or its agent representing ownership of all or a fractional part of a Pool.

"Administrator" means the Administrator of the Small Business Administration.

"Associate" of the Development Company or Small Concern (as the context requires) means any of the following individuals or entities relating to the Development Company or Small Concern (as the case may be), during the period six months before the date of loan application to SBA or an application for certification or at any time thereafter while the loan or the certification (as the case may be) are outstanding.

(1) An officer, director, member, proprietor, or partner, an employee authorized to act on behalf of the development company or small concern; a holder directly or indirectly of ten percent or more of such person's voting power, actual or contingent; or a close relative or partner of such person;

(2) Any individual or entity that directly or indirectly controls, is controlled by or is under common control with the development company or the small concern, or a close relative or partner of such person;

(3) Any enterprise in which ten percent or more of the value of the stock or ownership interest are owned or controlled, actually or conditionally, by one or more individuals or entities acting in concert and named in paragraphs (1) and (2) of this definition, or when any such individual or entity is an officer, director, proprietor, or partner.

(4) A "close relative" as used in paragraphs (1) and (2) of this definition means ancestor, lineal descendant, spouse, brother or sister of the lineal descendent of either; father-in-law,

mother-in-law, any son-in-law, daughter-in-law, brother-in-law or sister-in-law, who is a member of such individual's household.

"Central Fiscal Agent" or *"CFA"* means an agent of the 503 Company designated by SBA to receive and disburse funds related to 503 Loans (see § 108.503-11 of this Part) pursuant to an individual fiscal agent agreement (SBA Form 1254).

"Central Servicing Agent" or "CSA" means an agent of the 503 Company designated by SBA to receive and disburse funds related to 504 Loans [see § 108.504(e) of this part] pursuant to an individual Servicing Agent Agreement (SBA Form 1506).

"Development company" means a Section 501 State Development Company or a Section 502 Local Development Company, whether or not certified as a 503 Company, incorporated under the laws of one of the several States, formed for the purpose of furthering the economic development of its community and environs, and with authority to promote and assist the growth and development of small business concerns in the areas covered by their operations.

(1) A State development company is a corporation organized under or pursuant to a special legislative act to operate on a statewide basis.

(2) A local development company is a corporation, chartered under any applicable state corporation law to operate within a State. A local development company shall be principally composed of and controlled by persons residing or doing business in the locality; such local persons shall ordinarily constitute not less than 75 percent of the voting control of the development company. No shareholder or member of the development company may own in excess of 25 percent of the voting control in the development company if he or his associate(s) have a pecuniary interest in the project involving the Section 502 loan or in the small business concern which is to be assisted. The primary objective of the development company must be the benefit to the community as measured by increased employment, payroll, business volume, and corresponding factors, rather than monetary profits to is shareholders or members; any monetary profits or other benefits which flow to the shareholders or members of the local development company must be merely incidental thereto.

"Fiscal Agent" means an agent appointed by SBA to provide expertise and assistance related to sales by development companies of debentures pursuant to Section 504 and/or 505 Certificates pursuant to Section 505.

"Funding Fee" means a fee levied pursuant to § 108.505(i), deposited into the master reserve account pursuant to § 108.504(e) and disbursed to defray necessary transaction costs as determined by SBA.

"Independent Public Accountant" means a Certified Public Accountant or a Public Accountant licensed on or before December 31, 1971.

"Net Debenture Proceeds" means that part of the 503 Debenture proceeds that will finance eligible project cost, but does not include administrative costs (see § 108.503-5 (a) and (b)).

"Plant" means any long-term fixed asset which may include land, buildings, machinery, and equipment employed or to be employed by the Small Business Concern in the conduct of its business.

"Pool" means an aggregation of 504 Debentures approved by SBA.

"Pooler" means an entity approved by SBA to purchase 504 Debentures and, sometimes with other poolers, form a pool against which 505 Certificates may be issued.

"Reserve Deposit" means a refundable amount equal to two percent (2%) of the Net Debenture Proceeds in relation to a 503 Debenture, and a non-refundable amount of one half of one percent (0.5%) of the Net Debenture Proceeds in relation to a 504 Debenture.

"SBA" means the Small Business Administration.

"Selling Agent" means an agent of the development companies appointed to sell SBA-guaranteed 504 debentures to one or more poolers for their sale to investors of 505 Certificates.

"SIC Code" means the four digit designation by industry found in the Standard Industrial Classification Manual (1978), available from the Superintendent of Documents, Govern-

ment Printing Office, Washington, DC, 20402-9325.

"Small business concern" or *"Small Concern"* means a business concern which qualifies as a small business under § 121.4 of this chapter.

"Trustee" or *Transfer Agent"* means an agent designated by SBA to issue 505 Certificates and perform the administration of pools of debentures against which 505 certificates are issued and also to perform registration and transfer functions as well as paying functions for Debentures sold pursuant to Section 504, or 505 Certificates sold pursuant to Section 505, or both.

[52 FR 27675, July 23, 1987; 53 FR 10243, Mar. 30, 1988]

§ 108.3 Procedures for loan applications.

(a) *Relocation.* No loan shall be made under this part that will result in a substantial increase of unemployment in any area of the country.

(1) In cases where the small business concern to be assisted is relocating its operations, said concern must submit and certify to evidence, prior to the filing of the application by the State or local development company for a section 502 loan or prior to disbursement by the State development company of the proceeds of a section 501 loan previously granted, that its relocation will not result in a substantial increase of unemployment in the area from which it is moving. Said evidence shall be submitted by the State or local development company to the SBA field office as designated in paragraph (c) of this section, and within 30 days SBA will notify the development company whether it may file a section 502 loan application or disburse section 501 loan proceeds.

(2) A substantial increase in unemployment shall be presumed to occur when (i) the relocation would result in the unemployment of one-third of the work force of the small business concern to be assisted, (ii) the unemployment would result in making the area affected an area of substantial unemployment as designated by the Department of Labor, or (iii) the area affected is one of substantial unemployment as designated by the Department of Labor.

(b) *Form of application.* An application for a section 501 loan shall be made upon SBA Form 501 and for a section 502 loan upon SBA Form 502, and shall include all other pertinent information required in supporting schedules and forms. The application and supporting materials shall be submitted in duplicate.

(c) *Place of filing.* Application shall be made in the SBA field office serving the area in which the applicant is located if no bank participation in the loan is available. If participation is available, the application and supporting materials shall be submitted in duplicate to the lending institution which will submit one complete copy to SBA along with a letter confirming its willingness to participate.

(d) *Nondiscrimination.* Applicants for section 501 and section 502 loans and identifiable small business concerns, beneficiaries of such loans, will be required to execute when appropriate the compliance forms furnished by SBA.

§ 108.4 Operational requirements.

(a) *Fiscal year.* Each development company shall establish a fiscal year which shall not be changed without SBA prior written approval.

(b) *Place of business.* Each development company shall maintain a reasonably accessible place of business, shall have a separately listed telephone number, and shall be open to the public during normal business hours.

(c) *Good character.* A development company shall possess continuing good character. Such character will be deemed to exist where all the directors, officers, employees and members or shareholders possess good character. Officers, directors, and the manager of day-to-day operations of a development company shall file SBA Form 1081, Statement of Personal History. Good character shall be deemed absent if any one of the listed persons—

(1) Is currently incarcerated, on parole or probation,

(2) Is convicted of a felony,

(3) Suffered an adverse final civil judgment in a case involving a breach

of trust or the violation of a law or regulation protecting the integrity of business transactions or relationships, or

(4) Made a misrepresentation or false statement to SBA, as defined in § 108.7(a)(2).

Any change affecting this requirement shall be promptly reported to SBA. No application for development company assistance shall be approved while an officer, director, or owner of 10% or more of such applicant small concern is under indictment for, or formally charged with a felony.

(d) *Prohibition of Self-dealing.* (1) Self-dealing by the development company, its board of directors, members, employees, and other related parties (as hereafter defined) to the prejudice of the small concern, the development company, or SBA is prohibited.

(2) The development company's loan application to SBA shall contain a full disclosure statement from the development company and from the small concern relative to all relationships described in §120.102-10 of this chapter, between (i) the small concern, (ii) the development company including any person employed by the development company or regularly serving the company (e.g. professional staff as defined in § 108.503-1(b)(3) or (iii) its associate (as defined in § 108.2 of this part), or any lender providing financing for the development company project, all herein referred to as "related parties", that exist or have existed within six months prior to the date of the development company's application. Where no such relationships exist, the development company and the small concern shall so certify.

(3) Without prior written approval of SBA, a development company shall not permit a relationship to exist or to be created between the development company or related parties and a small concern to be assisted under this Part or while such assistance is outstanding, if such relationship could constitute a conflict of interest, or the appearance thereof, as between the development company or related parties and the small concern. As examples of such relationships and for illustrative purposes only, the following relationships are prohibited without pr SBA approval:

(i) A development company sh not, directly or indirectly, provide nancial assistance to a small conce in which the development company a related party has any financial int est, other than pursuant to this part.

(ii) A development company sh not permit a small concern to p chase property or services (includi insurance and legal services) from t development company, a related part or a designee of either.

(iii) A development company sh not provide financial assistance to used in repaying or refinancing an e isting debt due the development com pany or a related party unless SB shall have first made a written dete mination, upon the basis of eviden in the file, that:

(A) The terms of the existing indeb edness are causing undue hardship the small concern; and

(B) Refinancing, extension or mod fication of the outstanding indebted ness is not available.

(e) *Compliance with other laws.* De velopment companies and projects f nanced with federal assistance are sub ject to all applicable laws, includin (without limitation) the civil righ laws (see Parts 112, 113, 116, and 11 of these Regulations).

(Reporting and recordkeeping requiremen in paragraph (c) have been approved by th Office of Management and Budget unde control numbers 3245-0178, and 3245-0080

[51 FR 20770, June 6, 1986, as amended 52 FR 27676, July 23, 1987; 53 FR 1024 Mar. 30, 1988]

§ 108.5 Record and reports.

(a) *Records.* Financial records of development company including book of account are to be maintained in ac cordance with generally accepted ac counting principles. All financia records and minutes of meetings o members, stockholders, directors, ex ecutive committees, or other official and all documents and supporting ma terial relating to a development com pany's transactions shall be kept at it principal office and shall be currentl posted (within 45 days): *Provided however,* That portfolio items held b a custodian pursuant to written agreement shall be excepted from this requirement. Financial reports furnished to SBA shall make complete disclosure of matters relevant to the Act and regulations. See also § 108.503-3(d).

(b) *Preservation of records.* (1) Each development company shall preserve, for the periods required by the Internal Revenue Service and generally accepted accounting practices and in a manner that permits the immediate location of such records, such documents which are the basis for or related to the financial statements (including 503 loans) required from development companies.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, a miniaturized reproduction of any records may be substituted for the original and preserved for the required time in the required manner: *Provided, however,* That the development company shall:

(i) Cause a duplicate reproduction to be made on a current basis and stored separately from the original reproduction for the time required;

(ii) At all times have available facilities for clear projection and the production of clear facsimile enlargements.

(c) *Litigation reports.* When a development company becomes a party to litigation or other legal proceedings (including any action by the development company, or by a security holder thereof in a personal or derivative capacity, against an officer, director, employee or other member of such development company in an official capacity), it shall file a written report by certified mail with SBA within 10 working days, describing the proceedings, the identity of and the development company's relationship to other parties involved and, upon request by SBA, submit copies of the pleadings and other documents specified. Where such proceedings have been terminated by settlement or final judgment, the development company shall promptly advise SBA of the terms thereof.

(d) *Changes to be reported.* Any change in the articles or by-laws of the development company or in the conditions of the development company's eligibility to participate in the programs under this part (see definition of "*development company*" in § 108.2), shall be promptly reported to SBA with an SBA Form 1081 where applicable (see § 108.4(c)), and shall be subject to SBA's approval as a condition of the development company's continued participation in the programs under this part. Any change in the development company's name, address, or telephone number shall be reported to SBA not later than thirty days after these events. A development company shall submit notice of changes to SBA via certified mail or other form of delivery from which a receipt of acceptance is obtained.

(e) *Reports to owners or members.* In addition to other specified reporting requirements, the development company shall furnish the SBA field office with a copy of any general notice, letter, or other publication concerning the financial operations of the development company or any of its portfolio concerns provided to its owners or members.

(f) *Expense of documents.* A development company shall make available, at its own expense, documents or copies requested by SBA.

(Reporting and recordkeeping requirements in paragraph (a) have been approved by the Office of Management and Budget under control number 3245-0074. Reporting and recordkeeping requirements in paragraphs (b), (c), (d), (e), and (f) have been approved by the Office of Management and Budget under control number 3245-0080)

[51 FR 20771, June 6, 1986, as amended at 52 FR 27675, July 23, 1987; 53 FR 10243, Mar. 30, 1988]

§ 108.6 [Reserved]

§ 108.7 Violations based on false filings and nonperformance of agreements with SBA.

(a) In addition to the other provisions set forth in this part, the following shall constitute a violation of these regulations:

(1) Nonperformance of any requirements of any written agreement with SBA.

(2) Document(s) submitted to SBA which include a false statement know-

ingly made, a knowing misrepresentation, or failure to state a material fact necessary in order to make a statement not misleading in the light of the circumstances under which the statement was made.

(b) A violation of these regulations by a small concern or the development company shall allow SBA to accelerate any indebtedness of such concern issued to, held or guaranteed by SBA or, in the case of a lease assigned to or held by SBA, to terminate such lease.

[51 FR 20772, June 6, 1986; 53 FR 10243, Mar. 30, 1988]

§ 108.8 Borrower requirements and prohibitions.

(a) *Principals of concern receiving assistance.* Personal resources of the owner or owners of the small concern shall not disqualify such concern from eligibility under this part. However, applications for financial assistance will not be accepted for processing and no assistance shall be provided unless the development company can demonstrate to the satisfaction of SBA that the desired financing is not available from non-Federal sources on reasonable terms.

(b) *Credit requirements.* Section 120.103-2 (a) through (e) of this chapter also applies to development company assistance.

(c) *Eligible concerns.* A development company loan may be approved only to assist an identifiable small concern in accomplishing a sound business purpose. Whether the small concern is a proprietorship, partnership, or corporation is not a determining factor with respect to eligibility. A business may qualify as small, provided it meets the requirements of Part 121 of this chapter.

(d) *Eligibility of passive small concerns ("alter ego").* A concern is ineligible if it is a passive business (i.e. one not requiring a regular and continuous activity): *Provided, however,* That such passive small concern may be assisted if the applicant acquires the Plant with the proceeds of a section 502 loan or a 503 loan and leases it to an otherwise eligible small operating concern, and all of the following conditions are met:

(1) The applicant concern is a business that is organized for profit.

(2) The operating small concern is an eligible small business and the proposed use of proceeds would be eligible for such assistance if the operating small concern were the owner of the property that is owned or to be owned by the applicant.

(3) Subject to paragraph (d)(7) of this section the proceeds of the loan to be used to benefit directly such applicant will be used only to acquire or improve real or personal property for use by such operating small concern of the entire facility.

(4) The The ownership interest(s) in the applicant shall be completely identical with and in the same proportion as the ownership interest(s) in such operating small business concern, and this identity of interests shall remain unchanged until the section 502 loan or 503 loan is repaid in full or if SBA sooner gives approval to a change.

(5) Collateral includes an assignment of the lease between the applicant and the operating small concern and a lien on the property itself. The lease shall be for a term of not less than the term of the section 502 loan or 503 loan.

(6) The operating small concern must be either a guarantor or co-borrower, and any owners with 20% or more of the equity of the operating small concern and of the applicant must also guarantee the loan.

(7) The operating small concern must lease the entire facility from the applicant and may sublease a part thereof under the same conditions and to the same extent as set forth in § 108.503-4(a) for projects directly financed by a 503 loan.

(e) *Leasehold improvements.* In order to be eligible for development company assistance to construct or modify a facility on leased land (except as in paragraph (d) of this section or if the land is owned by the development company) the remaining term of the lease must equal or exceed the greater of the useful life of the facility or the term of the debenture. In such instances, financing may be permitted—

(1) Where the land owner allows the SBA to secure lien positions on the

land and improvements sufficient to fully secure its exposure, or

(2) Where other collateral sufficient in value to protect fully the interest of the Government is offered.

(f) *Ineligible concerns.* A development company shall not assist a small concern:

(1) If such small concern, or any part thereof, is to be relocated and such relocation could result in a substantial increase of unemployment in any area of the country or could result in the small concern's avoidance of its obligations;

(2) If the loan is intended to finance a plant that is not located in the United States or its possessions;

(3) If the loan to be made with the proceeds of a debenture guaranteed by SBA will provide funds to an enterprise primarily engaged in the business of lending or investing; or to any othewise eligible enterprise for the purpose of financing investments not related or essential to the enterprise. This requirement prohibits the granting of financial assistance to banks, life insurance companies, finance companies, factors, investment companies and other businesses whose stock in trade is money and who are engaged in placing capital or providing financing in a way intended to secure profits from its employment.

(g) *Other Loan eligibility requirements.* Sections 120.101-2 (except paragraph (e)), 120.102-5 and 120.102-9 of this chapter shall apply to loans made or guaranteed under this part.

[51 FR 20772, June 6, 1986, as amended at 53 FR 10243, 10244, Mar. 30, 1988]

§ 108.9 Participation with tax exempt financing.

A development company may use debenture or loan proceeds to make loans for projects also financed through obligations the income of which is exempt from Federal income taxes: *Provided, however,* That SBA's lien position shall not be subordinate to loans made from the proceeds of such tax-exempt obligations. Should the development company be authorized to issue such tax-exempt obligations, the SBA loan or debenture shall not be subordinated to such tax-exempt obligation.

[51 FR 20772, June 6, 1986; 53 FR 10243, Mar. 30, 1988]

§ 108.10 Savings clause.

The legality of transactions consummated pursuant to provisions of these regulations in effect at that time shall be governed thereby, notwithstanding subsequent changes. Nothing herein shall bar SBA enforcement action with respect to any transaction consummated in violation of provisions applicable at the time, but no longer in effect.

[51 FR 20772, June 6, 1986; 53 FR 10243, Mar. 30, 1988]

LOANS UNDER SECTION 501

§ 108.501 Statutory provision.

SECTION 501. (a) The Administration is authorized to make loans to State development companies to assist in carrying out the purposes of this Act. Any funds advanced under this subsection shall be in exchange for obligations of the development company which bear interest at such rate, and contain such other terms, as the Administration may fix, and funds may be so advanced without regard to the use and investment by the development company of funds secured by it from other sources.

(b) The total amount of obligations purchased and outstanding at any one time by the Administration under this section from any one State development company shall not exceed the total amount borrowed by it from all other sources. Funds advanced to the State development company under this section shall be treated on an equal basis with those funds borrowed by such company after the date of the enactment of this Act, regardless of source, which have the highest priority, except when this requirement is waived by the Administrator.

§ 108.501–1 Section 501 loans.

(a) *Participation.* To insure participation of private financing sources, the State development company shall agree, unless otherwise notified by SBA, that within 30 days after disbursement of the loan and thereafter during the period in which the loan or any part thereof remains unpaid, it will maintain portfolio investments or loans, or both, meeting the requirements of paragraph (e) of this section, having a stated outstanding principal value equal to no less than 133⅓ percent of the unpaid principal of the loan. Deviation from this ratio will be permitted during intervals between repayment or other disposal of such investments or loans and the prompt reinvestment of funds resulting from such repayment or disposal.

(b) *Loan amount.* Subject to the limitation contained in section 501(b) of the Small Business Investment Act of 1958, as amended, a loan authorized under this authority shall be in such amount as determined by SBA to be consistent with sound business practice.

(c) *Repayment of loan.* A section 501 loan shall not be made for a term longer than 20 years. Payment of all or any part of a loan may be anticipated without penalty on any interest payment date. Except when the rate of repayment is waived by SBA, such rate shall be adjusted by SBA so that a section 501 loan shall be repaid at no lesser rate than the other debts of the development company which first become due; but in any event not less frequently than annually: *Provided, however,* That at no time will the outstanding amount of a section 501 loan to a State development company exceed the limitation set forth in section 501(b) of the Small Business Investment Act of 1958, as amended.

(d) *Security.* Except where this requirement is waived by SBA, funds advanced to a State development company under a section 501 loan shall be secured on an equal basis with those funds borrowed by such company after August 21, 1958, regardless of source. Equal basis does not require that all SBA funds be secured in the highest degree that any other development company funds are secured; however, SBA funds shall be secured on a ratable basis.

(e) *Use of proceeds.* (1) The proceeds of loans to State development companies shall be used only to provide equity capital or make long-term loans, or both, to small business concerns. For the purposes of this section, a long-term loan or any debt instrument through which equity may be acquired shall have a final maturity of not less than 5 years. State development companies may use section 501 loan proceeds to acquire capital stock or other equity instruments from, or to relend to, small business concerns in need of assistance to finance their operations, growth, expansion, or modernization: *Provided, however,* That the authority to acquire with such proceeds an equity or other proprietary interest in a borrower shall extend only to State development companies which are wholly owned and controlled by private interests.

(2) The proceeds of loans to State development companies may not be used for:

(i) Relending or reinvesting by the small business concern;

(ii) Purposes contrary to the public interest, including but not limited to gambling enterprises and activities (see § 120.2(d)(5) for exceptions);

(iii) Any purposes which would encourage monopoly or be inconsistent with accepted standards of free enterprise;

(iv) Use outside of the United States: *Provided, however,* That a State development company may provide funds to a small business concern which is subject to State or Federal jurisdiction (A) for use in the domestic production of products for distribution abroad, or to acquire abroad materials for such operations, or (B) for use in its branch operations abroad or for transfer to its controlled foreign subsidiary in exchange for further equity interest in or the monetary obligation of such foreign subsidiary; so long as the major portion of the assets and activities of such concern, after funds are so employed, remains within the territorial jurisdiction of the United States.

(f) *Interest rate.* The rate of interest of Section 501 loans to State development corporations shall be a rate determined annually by the Administrator consistent with the rate set for business loans, 15 USC 636(a).

(g) *Firm commitment.* A firm commitment may be given by SBA for a period of one year from the date of approval of a loan application.

(h) *Disposal of obligations.* SBA may at its discretion and upon such terms and conditions and for such consideration as shall be deemed to be reasonable, sell, assign, transfer or otherwise dispose of the note, and all other evidence of debt or security held in connection with the payment of any loan made under section 501 of the Small Business Investment Act of 1958, as amended.

[38 FR 31813, Nov. 19, 1973, as amended at 39 FR 20477, June 11, 1974; 39 FR 28419, Aug. 7, 1974; 45 FR 73020, Nov. 4, 1980]

LOANS UNDER SECTION 502

§ 108.502 Statutory provisions.

The relevant statutory provisions will be found at 15 U.S.C. 696.

(Sec. 308(c) of the Small Business Investment Act of 1958, 15 U.S.C. 687, as amended)

[44 FR 45124, Aug. 1, 1979]

§ 108.502-1 Section 502 loans.

SBA is authorized to make loans to development companies to finance plant acquisition, construction, conversion, or expansion, including the acquisition of land: *Provided, however,* That such loans will assist an identifiable small business concern in accomplishing a sound business purpose.

(a) *Sound business purpose.* A loan will not be considered to be for a sound business purpose: (1) If, in any case where the relocation of a small business concern is involved, the relocation will result in the avoidance by such concern of obligations incurred in the location from which the move is to be made or if the primary incentive for such relocation is a local subsidy; (2) if the concern is being relocated from another area unless there is demonstrated to SBA a need to locate closer to the source of basic materials or to major consumers, or to consolidate operations in one location, or unless such relocation is justified by other reasons satisfactory to SBA; (3) if it is to accomplish an expansion or conversion which is unwarranted in the light of the small business concern's past experience and management ability; (4) if it will subsidize inferior management; (5) if it provides funds for speculation; or (6) if its effect will be to encourage monopolies or be inconsistent with accepted standards of the American system of free competitive enterprise.

(b) *Ineligible categories.* A loan will not be made if the small business concern to be assisted does not qualify as an eligible small business under Part 120 of this chapter, except where inconsistent with specific provisions in this part.

(c) *Collateral.* All loans made under this section shall be so secured as reasonably to assure repayment. SBA shall determine that all property and rights available as collateral security for such a loan are of a character and value as reasonably to assure repayment of the loan. Collateral shall be insured against such hazards and risks as SBA may require.

(d) *Loan amount.* (1) Loans made by SBA under this section shall be limited to $750,000 for each identifiable small business concern. The total unpaid amount of any such SBA loan or loan in aid of a particular small business concern shall never exceed $750,000.

(2) Development companies may be eligible to be considered for such additional loans of not more than $750,000 each, as there may be additional identifiable small business concerns to be assisted.

(e) *Participation by the development company.* (1) A development company may be required to furnish a reasonable part, as determined by SBA, of the funds necessary to accomplish the plant acquisition, construction, conversion or expansion, or the acquisition of land. For the purposes of this paragraph, the furnishing of not less than 10 percent of the necessary funds generally is considered a reasonable part. Exceptions for a lesser amount may be granted in extreme hardship cases where a project with a high impact would otherwise be lost to the community. SBA may require that the funds to be furnished by the development company be derived from paid-in capital or surplus of the development company, as well as from other sources. The amount of paid-in capital to be required will depend in part upon the amount of the loan, the maturity of the loan, the extent to which other borrowings of the development company may be subordinated to the SBA loan and such other factors as the SBA may consider appropriate to the individual case. For the purpose of this section, "paid-in capital" is cash and property actually received in exchange for shares of stock issued by the development company, or cash and property contributed to the development company without obligation therefore, or cash and property for which the development company is indebted on a subordinated basis.

(2) Paid-in capital may also be derived, by way of example and not of limitation, from money contributed to the development company by State or local governments, banks or other financial institutions, or the small business concern (or its owners, stockholders or affiliates) receiving assistance from the local development company.

(3) Contributions or loans to a local development company from any source may not be conditioned on the granting of voting rights, stock options, or any other type of pecuniary interest in or control of the development company or the small business concern being assisted.

(4) A small business concern (its owners, stockholders, affiliates or associates) or anyone with pecuniary interest in the project may provide more than 25 percent of the development company's required injection provided that the development company, (i) has demonstrated a broad base of community participation and a depth of organization which assures continued operation, (ii) has participated in two or more projects and, (iii) is unable to raise funds from other sources. Upon compliance with these circumstances, a small business concern may provide up to 100 percent of the development company's injection. The local development company and the lender or SBA must determine that furnishing an increased share of the injection will not adversely affect the working capital position of such small business concern.

(5) A small business concern may also provide more than 25 percent of the development company's required injection when the development company's proposed project involves multiple small business concerns (four or more) which are located in a target area (neighborhood revitalization, etc.) or an area of socially and economically disadvantaged groups or when the small business concerns have been dislocated by Federal or State construction, urban renewal or similar causes.

(f) *Other financing.* (1) A loan application will be accepted for processing if the development company shall show to the satisfaction of SBA that the desired financial assistance is not available on reasonable terms from other sources.

(2) It must be satisfactorily demonstrated that the desired financing is not available to the development company by means of sale of stock or debt securities, or both, of the development company; from funds agreed to be furnished by participating members of the development company; by means of a first mortgage participation; or by loans from a lending institution (or not less than two lending institutions where the population of the community exceeds 200,000) which has a sufficient lending limit to cover the loan applied for.

(3) Generally, the plant should constitute adequate collateral. However, SBA may require a pledge of additional assets where the use of such additional collateral is necessary for the loan to be so secured as to reasonably assure repayment.

(g) *Participation by other financial institutions in loans to development companies.* In order to stimulate and encourage loans by banks and other lending institutions, the SBA shall require that:

(1) An applicant for a loan show that a participation by another lending institution is not available. No financial assistance shall be extended in participation with another lending institution on an immediate basis unless the applicant shall show that a participation on a deferred basis is not available.

(2) SBA's share of immediate participation loans shall not exceed 75 percent of the loan. Exceptions may be made in cases when the participant's legal lending limit precludes a 25 percent participation. In such cases the participant will be required to share in the loan to the extent of its legal lending limit but in no event less than 10 percent. In guaranteed loans the exposure of SBA under the guaranty may not exceed 90 percent of the unpaid principal balance and accrued interest.

(3) Participation charges and service fees shall be in accordance with § 120.3(b) (1) and (3), respectively, of this chapter.

(h) *Interest rate.* Interest rate on a direct section 502 loan to a development company and on SBA's share of a section 502 loan made in participation with another lending institution shall be at a rate determined annually by the Administrator consistent with the rate set for section 7(a) business loans. For the purposes of this paragraph, bank's share of the guaranteed participation shall be the entire amount of the loan until such time as SBA shall actually purchase its participation.

(i) *Loan maturity.* The maturity of any loan under this section may not exceed 25 years plus such additional period as is estimated may be required to complete construction, conversion or expansion. It shall be the policy of SBA generally, in the case of a lease agreement between a local development company and an identifiable small business concern, to require that the term of the lease shall not be less than the term of the loan. It shall also be the policy of SBA generally to require repayment in equal periodic installments. Extensions or renewals of the loan for an additional period not to exceed 10 years beyond the stated maturity may be granted by SBA only if such extensions or renewals will aid in the orderly liquidation of such loans.

(j) *Use of proceeds.* (1) As of the time of approval and the time of disbursement of a section 502 loan, the development company shall submit evidence satisfactory to SBA that the proceeds of such loan will be used for plant acquisition, construction, conversion, expansion, or the acquisition of land, solely to assist an identifiable small business concern: *Provided, however,* That as of the time of disbursement, with respect to size, evidence need be submitted to show only the fact that the small business concern to be assisted has not adversely affected its status as an identifiable small business concern since the date of approval of loan by reason of any reorganization (including any reorganization under any Federal or State statute, sale of assets, merger, consolidation, purchase, sale or exchange of securities, or long-term lease) or franchise agreement.

(2) [Reserved]

(3) Evidence, satisfactory to SBA, shall be submitted prior to approval and disbursement of said loan, that the identifiable small business concern intends or has the right to use the said plant during a period of time equal at least to the maximum contract term of the section 502 loan or 5 years after full disbursement of the section 502 loan, whichever is the longer period; and that use of said proceeds will assist only the identifiable small business concern. Evidence of such intent and purpose shall be deemed to exist where the proceeds of the section 502 loan will be used by the development company to:

(i) Relend to the identifiable small business concern for acquisition, construction, conversion, or expansion of a plant owned, occupied, and used by said concern;

(ii) Acquire, construct, convert, or expand a plant to be sold immediately to the identifiable small business concern for its occupancy and use;

(iii) Acquire, construct, convert, or expand a plant owned by the development company 'to be leased to the identifiable small business concern with the right in such concern to apply rentals, under a purchase option arrangement, on the purchase price of the plant;

(iv) Acquire, construct, convert, or expand a plant owned by the development company to be leased to the identifiable small business concern without a purchase option arrangement, but with the right in such concern to occupy the plant during a period of time equal at least to the maximum contract term of the section 502 loan or 5 years after full disbursement of the section 502 loan, whichever is the longer.

(j-1) *Contract terms.* The contract between the development company and said concern will set forth terms, acceptable to the concern and SBA, that will provide the development company with total funds not in excess of those necessary (1) to repay with interest the section 502 loan; (2)

for applicable taxes upon the maintenance of the plant; (3) to recover administrative costs and provide a reasonable sum as a reserve for contingencies to cover unusual costs or expenses; and (4) to recover capital investments and expenditures of the development company's own funds in the project with a reasonable return on such capital investments and expenditures.

(k) *Compliance.* (1) All complaints alleging discrimination in construction contracts involving the use of section 502 loan proceeds shall be investigated by SBA. Complaints alleging discrimination must be filed with SBA within 90 days of the alleged discrimination.

(2) SBA may hold informal hearings and make findings regarding the allegation of discrimination in accordance with the rules of the President's Committee on Equal Employment Opportunity and Part 134 of this chapter. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of § 134.34. In the event that SBA finds discrimination to have occurred, it may cancel loans approved but not disbursed to an applicant, it may refuse to make further disbursement on account of the loan, or it may accelerate the maturity of the note between borrower and SBA, or it may take any action of a lesser nature. Failure of SBA to invoke or assert any of the aforesaid sanctions or any other sanctions shall not be construed to be a waiver of SBA's right to assert any of such sanctions. See also Part 112 of this chapter.

(Sec. 308(c) of the Small Business Investment Act of 1958 (SBI Act), 15 U.S.C. 687, as amended)

[38 FR 31813, Nov. 19, 1973, as amended at 39 FR 39867, Nov. 12, 1974; 41 FR 26202, June 25, 1976; 42 FR 18388, Apr. 7, 1977; 43 FR 14007, Apr. 4, 1978; 43 FR 43019, Sept. 22, 1978; 44 FR 45124, Aug. 1, 1979; 44 FR 72102, Dec. 13, 1979; 49 FR 33628, Aug. 24, 1984; 53 FR 35458, Sept. 15, 1988]

ASSISTANCE UNDER SECTION 503

SOURCE: Sections 108.503 through 108.503-15 appear at 51 FR 20773, June 6, 1986; 53 FR 10243, Mar. 30, 1988, unless otherwise noted.

§ 108.503 Program objectives.

(a) *Statute.* The relevant statutory provisions will be found at 15 U.S.C. 697.

(b) *Objectives. The purpose of this program is to foster economic development in both urban and rural areas by providing a portion of long term fixed-asset financing for small business projects through the guaranty by SBA of debentures issued by 503 companies. In order to qualify for such guaranty, the 503 company must demonstrate to SBA's satisfaction that the project will have significant impact in its community. Subject to paragraph (c) of this section, each project shall achieve at least one of the following three economic development objectives:*

(1) *Jobs.* To effect, at a minimum, one "job opportunity" per $15,000 of 503 debenture assistance. The job opportunity estimate shall be based on objective data and the basis for such estimate shall be submitted with the application for guaranty (SBA Form 1244). "Job opportunity" means:

(i) Full time (or equivalent) permanent employment created as a direct result of the project within two years of the sale of the Debenture, or

(ii) Full time (or equivalent) permanent employment retained that would have been lost to the community but for the project.

(2) *Community or area development.* A project which is expected to stimulate other business development in the community, bring new income into the area, or assist the community in diversifying and stablizing its economy. Applications for such projects shall be accompanied by written documentation demonstrating the community impact. Such project may be approved only if the average job opportunity cost for the 503 company's 503 portfolio do not exceed the standards of paragraph (c) of this section.

(3) *National objectives.* A project which will result in increased productivity through the modernization of existing facilities necessary to retain jobs, expansion of exports, expansion of minority business development, assisting manufacturing firms (SIC Codes 20-49), or assisting businesses in labor surplus areas as defined by the

U.S. Department of Labor (see paragraph (c) of this section below). Such project may be approved only if the average job opportunity costs for the 503 company's 503 portfolio do not exceed the standard of paragraph (c) of this section.

(c) *Job opportunity average.* The 503 company shall maintain an average of at least one job opportunity per $15,000 of 503 financing: *Provided, however,* That the Director, Office of Economic Development, SBA, may permit a job opportunity average higher by up to twenty-five percentum (25%), for good cause shown, in Alaska, Hawaii, or in labor surplus areas listed monthly in the Department of Labor publication "Area Trends", or in "redevelopment areas" as defined in the Public Works Economic Development Act, 42 U.S.C. 3161, or "Urban Jobs and Enterprise Zones", as designated by State law. Such average shall be based on job opportunities actually provided within the first two years after the project is completed and shall be measured at the end of the 503 company's fiscal year.

(d) *Monitoring.* Each 503 company shall monitor the job opportunities provided by its 503 loans. Each 503 company shall report in its annual report the job opportunities actually provided by each project computed in accordance with paragraph (c) of this section, and shall justify an investment average in excess of that permitted by paragraph (c) of this section, setting forth measures to reduce such average (See § 108.503-3(f)(2)). Unless SBA directs otherwise in writing, the 503 company shall obtain, and have available in its records for SBA inspection, a certification from the small business concern assisted, based on its employment data, which supports the job opportunity figures.

(Reporting and recordkeeping requirements in paragraphs (b) and (d) have been approved by the Office of Management and Budget under control numbers 3245-0071 and 3245-0074, respectively.)

§ 108.503-1 Eligibility requirements for 503 companies.

(a) *General.* SBA is authorized to guarantee the timely payment of all principal and interest as scheduled on any debenture issued by any qualified development company. The full faith and credit of the United States is pledged to the payment of all amounts so guaranteed. Such debentures (herein sometimes referred to as 503 debentures) will be issued within certain limits solely for the purpose of assisting identifiable small business concerns to finance plant acquisition, construction, conversion, or expansion, including the acquisition of land. Plant construction includes the acquisition and installation of machinery and equipment. For the purpose of this section, development companies qualified to participate in this program (herein referred to as "503 companies") shall be formally certified by SBA on the terms and conditions contained herein, consistent with the intent of Congress. To qualify, a development company must demonstrate to the satisfaction of SBA, each of the following:

(b) *Organizational requirements.* The purpose of a 503 company shall be to foster economic development in its area of operations; any benefits flowing to shareholders, members or other related parties shall be merely incidental to such purpose. Each 503 company shall be organized as a non-profit corporation under applicable laws and shall be in good standing. Those 503 companies organized on a for-profit basis and certified by SBA or those having an application for certification on a for-profit basis pending prior to June 6, 1986, shall be allowed to continue as participants provided they comply with the applicable eligibility requirements. Each applicant for certification and each 503 company shall demonstrate to SBA's satisfaction as a condition of such company's participation in the program that it has:

(1) *Management.* Adequate management ability in its board of directors, officers and professional staff to direct and administer its functions prudently. An executive director or other person managing day-to-day operations is considered an officer of the 503 company. Legal and accounting functions may be contracted out (See also paragraph (b)(3) of this section.

(2) *Board of directors.* The board of directors shall be composed of individuals who are involved in the economic development of the area of operations and chosen from the membership by the stockholders or members to represent at least three of the four elements specified in paragraph (d)(2) of this section. However, no single element shall control. The board members shall be responsible officials of the organizations they represent and at least one of these directors must possess commercial lending experience. Such board shall meet at least quarterly to make management decisions for the 503 company, and shall be responsible for the loan making and servicing decisions of the staff, as specified in paragraph (b)(3) of this section. Regardless of the number of board members, a quorum of such board shall never be less than five members. If loan approval or servicing actions are put to a vote, the quorum shall include at least one director with commercial experience, unless the 503 company can document that such director or another person approved by SBA as possessing commercial lending experience has recommended approval of the loan or servicing actions.

(3) *Professional staff.* Each 503 company shall have a full-time professional staff. The number of personnel may vary but there must be at least one qualified person available during regular business hours. Such staff shall be adequate and qualified by training and/or experience, satisfactory to SBA, to market the 503 program throughout its area of operations, package and process loan applications, assist in closing loans, and service the 503 company's loan portfolio. The marketing, packaging, processing, and servicing functions may be contracted out only if those performing the functions have prior related experience and training and are qualified individuals or organizations who reside or do business in the 503 company's area of operations. Any contract for these functions other than contracts for employment of individuals, shall require SBA's prior written approval, shall be approved annually by SBA and shall prohibit self serving actions which would increases costs to a Small Business borrower or which would adversely affect the financial condition of the 503 company. Compensation under such contracts shall be reasonable and customary for like services by like organizations in the area of operations of the 503 company and be billed on an hourly basis. Such contracts shall be subject to audit by SBA at no cost to the 503 company. Nothing in the foregoing shall preclude a 503 company from contracting with another 503 company for such services, subject to SBA's prior written approval.

(4) *Management service.* A 503 company shall have the ability to provide, or cause to be provided, management advice and services to small concerns. Where a 503 company performs such services pursuant to a contract for other then employment of individuals, such contracts shall be subject to audit by SBA at no cost to the 503 company. The conditions set forth for such contracts in paragraph (b)(3) of this section shall also apply.

(5) *Financial capability.* A 503 company shall have the ability to sustain its operations on a continuous basis from reliable sources of funds, such as income from services rendered, contributions from government or other financial sponsorship or from the 503 company's capital. Applicant shall submit with its application (SBA Form 1246) a budget for the 503 company's operations approved by its board of directors which demonstrates that adequate resources will be available to perform the 503 company functions. Where the professional staff functions are provided by a 503 company's affiliate as defined in § 121.3(a), the approved budget of such affilitate may be substituted.

(c) *Area of operations.* (1) 503 company shall be certified to operate in a defined area which shall not exceed the boundaries of its State of inpcorporation: *Provided, however,* That such company may—

(i) Operate in more than one State if a state line bisects a contiguous economic area, as determined by SBA, in which case such company may operate within such area, or

(ii) With SBA prior approval expand its area to include a Territory or possession of the United States.

(iii) With SBA prior approval of each loan, temporarily expand its area of operations to include an area underserved by the 503 program. A company expanding such area in order to make one or more loans in such area for a period of one year or less shall, as to the expansion area, be exempt from the requirements of paragraphs (b)(2), (c)(4) and (d) of § 108.503-1 of this part.

(2) The proposed area of operations shall be sufficient to support the level of activity prescribed by § 108.503-3(c) but not greater than can be sustained by their membership and staff, and as permitted by this subsection. An applicant shall demonstrate the need for its services in its proposed area of operations to SBA's satisfaction. Such showing shall discuss why another 503 company is needed in a given area if a 503 company already operates there, provide a plan to avoid duplication or overlap, and demonstrate how the applicant proposes to meet the three objectives specified in § 108.503(b) without specialization in a particular industry. The applicant shall also provide evidence that it will receive the active support of the government for its area, e.g., city government for citywide 503 companies, county government for countywide operations, etc.

(3) There shall be no limit on the number of citywide, county, or multicounty 503 companies per State, subject to paragraphs (c) (1) and (2) of this section: *Provided, however,* That no State shall be permitted more than one statewide 503 company.

(4) *Application for expansion of the area of operations.* (i) Application for expansion of area of operations shall be written request to the SBA district office or branch office serving the area in which the 503 company's headquarters are located, containing the following:

(A) Definition of the new area of operations.

(B) Justification of the need for expansion to the new area, including:

(*1*) Identification of existing 503 companies in the area;

(*2*) Description of the services the 503 company can provide that others are not providing, and

(*3*) Description of the adequacy of the 503 company's staffing to serve the proposed area.

(C) A list of proposed members, by sub-area and groups as proposed.

(D) A certified copy of the resolution of the board of directors to expand as proposed.

(E) A projection of the 503 company's activity in existing and new areas for the next two years.

(ii) Prior to approval, SBA shall provide notice to all 503 companies presently servicing the proposed area, allowing 30 days for comment.

(iii) A 503 company proposing to expand shall also provide public notice as set forth in §108.503-2(b).

(d) *Membership.* The 503 company must be representative of the State, or subdivision thereof, in which the company operates. Evidence of such representation shall include the following:

(1) The 503 company must have at least 25 members or stockholders. Members or stockholders must be geographically representative of the 503 company's area of operations. No person or concern may own or control more than ten percent of the 503 company's stock or voting membership.

(2) The membership must be representative of the following four groups. A 503 company certified by SBA prior to June 6, 1986, shall have 12 months from that date to comply with this requirement:

(i) *Government* representation must be from the level of government corresponding to the area of operation, unless otherwise approved by the Director, Office of Economic Development, SBA. Such representation shall be from the government organization responsible for economic development functions. For example, a multicounty 503 company shall have representation or evidence of support from each county government or from a regional government council encompassing its area of operation, and a statewide 503 company shall have representation or evidence of support from the State government department responsible for economic development. With the approval of the Director, Office of Economic Development, another form of active government participation satisfactory to SBA may be chosen;

(ii) *Private-sector lending institutions* representative of the area of operations such as banks, savings and loan institutions and others in the business of providing commercial long-term fixed asset financing;

(iii) *Community organizations* such as chambers of commerce operating within the area of operations, foundations, trade associations, colleges, universities and other organizations dedicated to economic development;

(iv) *Business concerns* that are representative of the area and the business population within the area.

(3) Local 503 companies may have a representative in the membership of broader based 503 companies (e.g., Statewide or multi-county) that serve the local 503 company's area of operations.

(e) *Permissible functions of a 503 company.* A 503 company shall provide financial assistance in participation with SBA only under Title V of the Small Business Investment Act and this part. Such company may also help small concerns obtain other assistance from SBA by preparing loan applications, facilitating management and procurement assistance, and obtain assistance from other government and non-government programs. 503 companies are encouraged to marshall resources for the benefit of small business in a manner that will result in community economic development. A 503 company is not prohibited from participating in the 501 or 502 loan program if such company meets the qualifications set forth in § 108.501 or § 108.502. A Small Business Investment Company (SBIC) licensed by SBA may not be certified as a 503 company.

(f) *Required functions of a statewide 503 company.* A 503 company operating on a statewide basis shall comply with the eligibility and operational requirements for all 503 companies. In addition, such company shall:

(1) Foster economic development throughout the State;

(2) Demonstrate its compatibility with and relationship to existing 503 companies; and

(3) Provide development company assistance to those areas not being served by a 503 company.

(g) *Prohibition.* No officer, direct
or manager of a 503 company may
an officer, director or manager of a
other 503 company, except that t
board of directors of a 503 compa
covering a broader area of operatio
may include a member or director o
local 503 company within the area
operations.

(Reporting and recordkeeping requiremen
in paragraph (a) and also for paragrap
(b), (c), and (d) have been approved by t
Office of Management and Budget und
control numbers 3245-0071 and 3245-007
respectively.

[51 FR 20773, June 6, 1986, as amended
52 FR 27676, July 23, 1987; 53 FR 1024
Mar. 30, 1988]

§ 108.503-2 Certification.

(a) *Application for certification.* A
plication for certification as a 503 com
pany shall be submitted on SBA For
1246, hereby made a part of these re
ulations, to the SBA field office ser
ing the area in which the prospecti
503 company's headquarters are loca
ed. The field office shall forward th
application and its recommendatio
through the Regional Office, to th
Director, Office of Economic Develo
ment, for final determination of elig
bility. Qualified companies shall r
ceive a certificate evidencing eligibilit
for participation in this program.

(b) *Public notice.* The proposed 50
company shall publish a notice in
newspaper of general circulation
the city, county or counties of the pr
posed area of operations, and sha
furnish a certified copy to SBA withi
10 days of the date of publicatio
Such notice shall include such appr
priate information including the nam
and location of the proposed compan
its purpose and area of operations, a
the names and addresses of its off
cers, directors, and members. Th
public shall be afforded reasonable o
portunity for the submission of wri
ten comments to the local SBA offic

(c) *Transfer and surrender of certi
cate.* A certificate may not be tran
ferred without SBA's prior written a
proval, nor surrendered without suc
SBA consent. Request for approval
consent shall be accompanied by
plan to transfer the 503 company

portfolio to another 503 company or a participant in another SBA lending program or to SBA for servicing. Upon receipt of the 503 company's request for transfer or in the event the 503 company surrenders its certificate to SBA, SBA may conduct a special audit of the 503 company (see § 108.503-15(d)). The 503 company's name will be removed from the published list of 503 companies.

(Reporting and recordkeeping requirements in paragraph (a) have been approved by the Office of Management and Budget under control number 3245-0073)

§ 108.503-3 Operational requirements for 503 companies.

(a) *Responsibilities.* A 503 company shall:

(1) Offer its services to the business community in its area of operations and cooperate with financial institutions;

(2) Package and process loan applications;

(3) Close and service loans;

(4) Offer management services; and

(5) Maintain the eligibility requirements set forth in § 108.503-1 of this part.

(b) *Diversified 503 loan portfolio.* A 503 company shall not concentrate its 503 loan portfolio in any one industry or type of business nor shall such portfolio be concentrated in new businesses. A "new business" is an entity which, together with any predecessor of such entity, has been in business for less than 2 years.

(c) *Level of activity.* In order to meet the needs of small business in its area of operations, a 503 company shall conduct active operations. For the purposes of this paragraph, such company shall be presumed to be inactive if, during any full fiscal year, it has not provided financing under Title V of the Small Business Investment Act to at least two small concerns: *Provided, however,* That written justification for inactivity, acceptable to SBA, may rebut the presumption. Examples of acceptable justification may include recent entry into the program, a large number of small concerns assisted in the preceding fiscal year, or demonstration to SBA's satisfaction that the 503 company has achieved its goals and has had a significant impact on its operating area.

(d) *Records.* The 503 company shall develop a system to ensure the following information and documents or a photographic copy thereof relating to its 503 loan portfolio are available for review at its principal office: A separate file for each 503 loan which shall contain all documents and material relating to the loan application submitted to SBA including the loan authorization and all correspondence relating to such Loan prior to closing; all documents relating to the Loan closing, including documents relating to the sale of Debentures, evidence of the 503 company's injection and the amortization schedule; financial statements of the small concern, related correspondence, evidence of field visits, condition of the collateral, and evidence of payment of taxes and insurance, and other items that have been reviewed.

(e) [Reserved]

(f) *Reporting requirements.* In addition to the requirements of §§ 108.4(c), 108.5 (c) and (d) and 108.503(d), each 503 company shall submit to the SBA field office serving the area where its headquarters are located, within 90 days after the end of its fiscal year, an annual report, in duplicate, containing financial statements, operational and management information. SBA may require, within a stated period, additional or interim reports of a similar nature. The Report shall be prepared in accordance with the Guide for the Preparation of the Annual Report (SBA Form 1253).

(1) The financial statements contained in the annual report shall accompany a report of an opinion audit conducted in accordance with generally accepted auditing standards and submitted by the 503 company's independent public accountant. Financial statements of 503 companies with an outstanding portfolio of 503 loans of less than $10 million may be submitted on no less than a "review" basis, as defined in "Statements on Standards for Accounting and Review Services #1" (published by the American Institute for Certified Public Accountants). Where this may cause an undue hardship to the 503 company, SBA may

grant an appropriate waiver of this requirement.

(2) The operational and management part of the annual report shall contain an assessment of needs and resources available as well as an explanation of the 503 company's 503 loan activity and other accomplishments for the year then ended and plans for the next year.

(3) [Reserved]

(4) In addition to the required Forms 1081, personal résumés of new officers, directors and professional staff employed by the 503 company shall be promptly filed with the SBA office serving the area of operations. The requirement for personal résumés may be waived by SBA if such résumé has been previously filed with SBA under a development company program, and no significant change has occurred.

(5) Unless it can be demonstrated to SBA's satisfaction that every reasonable effort has been made by the 503 company to secure such information and such efforts have proven unavailing, SBA shall not process 503 loan applications from a 503 company while a required report is outstanding or, in the opinion of SBA, incomplete.

(6) See also § 108.503-13(b) of this part.

(g) *Restriction on equity participation.* The 503 company may not provide assistance to a small concern in which either such 503 company or its associates (as defined in § 108.2) own an equity interest, nor may a 503 company or any of its associates acquire an equity interest in any concern assisted by such 503 company.

(h) *Substitution of a 503 company.* A 503 company in good standing approved by SBA may assume all or part of the portfolio of another 503 company within its area of operations or contiguous thereto when the original 503 company is unable or unwilling to service its portfolio and such assumption is approved by SBA. If no suitable 503 company can be found, SBA may approve a transfer to another entity. An assumption shall not be approved if the transferee does not have a demonstrated capability to service such Loans. (See § 108.503-2(c).)

(Reporting and recordkeeping requirements in paragraph (f) have been approved by the Office of Management and Budget under control numbers 3245-0178 and 3245-0074)

[51 FR 20773, June 6, 1986, as amended at 52 FR 27677, July 23, 1987; 53 FR 10243 Mar. 30, 1988]

§ 108.503-4 Project eligibility.

(a) *Eligible projects.* The proceeds of 503 debentures shall be used for the purpose of assisting identifiable small concerns to finance plant acquisition, construction, conversion, or expansion, including the acquisition of land. Plant construction includes the acquisition and installation of machinery and equipment. Each project must comply with § 108.503(b). Sections 120.101-2(a)-(d) and (g), 120.102-7, and 120.103-2(a)-(e) of this chapter also apply. Up to fifteen (15) percent of the total project may be leased if—

(1) The project is to construct a new facility,

(2) Resonable projections of growth indicate the applicant concern will need additional space within three years and

(3) It is not feasible to build an addition to the building in the future.

In purchasing existing facilities, at least 51% of the space must be occupied by the applicant concern and the balance may be leased to another concern, provided that proceeds from the 503 loan are not used to remodel or convert the rental space.

(b) *Ineligible projects.* Ineligible projects or project components include, but are not limited to:

(1) Those whose purpose is to finance the acquisition, construction, improvement, or operation of real property which is, or is to be, held primarily for sale or investment and is not to be used in connection with the applicant's otherwise eligible business.

(2) Assets so limited in potential use or marketability that they could not be resold in the event of failure of the borrower, or if sold, the price could result in a substantial loss on the 503 debenture. Such financing may be considered if other collateral sufficient in value to protect fully the interests of Government is offered.

(3) Applicant businesses of any kind, where the majority of owners, or the

management does not have demonstrated management capability.

(4) Automobiles and trucks of any kind, and airplanes: *Provided, however,* That in Alaska and Hawaii airplanes may be a part of a project not to exceed 20% of the project cost if it can be demonstrated to SBA's satisfaction that such airplane(s) are indispensable to the success of the project.

(c) *Restrictions*—(1) *Working capital.* Proceeds from the 503 loan may not be used for working capital purposes or to refinance prior obligations of the small concern, unless a portion of the funds are needed to replace expenditures made in anticipation of a 503 loan (see § 108.503-5(d)).

(2) *Statutory ceiling.* Proceeds from the SBA 7(a) loan program shall not (i) be used to replace working capital invested in the 503 project by the small concern as the 503 company's injection, nor (ii) be used to finance part of the 503 project. No such loan shall be approved if the total amount outstanding for the benefit of any small concern from the Business Loan and Investment Fund established under section 4(c) of the Small Business Act exceeds $750,000.

(3) Subject to the requirements and prohibitions of the Small Business Investment Act, and Part 107 of these regulations, Small Business Investment Companies (SBICs) may—

(i) Provide joint financing in projects,

(ii) Provide financing to the small concern who then invests in the project, or

(iii) Replace funds invested by the small concern: *Provided,* That—

(A) Such funds shall be considered to be from federal sources as defined in paragraph (c)(4) of this section where the SBIC has leverage funds (SBA guaranteed or direct funds including preferred stock purchases);

(B) Such funds shall be subordinated to the 503 loan;

(C) Such funds shall not be repaid at a faster rate than the debenture; and

(D) Where the SBIC has not received leverage funds, such investment will be considered from private funds.

(4) *Administrative ceiling.* No more than fifty percent (50%) of eligible project cost as defined in § 108.503-5(a) shall be derived from Federal sources. Proceeds of a Federal loan, whether received directly or through one or more intermediaries, shall be deemed derived from a Federal source. Proceeds of a Federally guaranteed or insured loan shall be deemed derived from Federal sources to the extent of the federally guaranteed or insured percentage of the entire loan, whether received directly or through one or more intermediaries. Funds similarly derived directly or indirectly from a Federal grant or from a Government Corporation (as defined in 31 U.S.C. 1901) shall also be deemed derived from Federal sources. Proceeds of obligations the income of which is exempt from Federal income taxes shall not be deemed derived from Federal sources. See also § 108.9.

[51 FR 20773, June 6, 1986, as amended at 52 FR 27677, July 23, 1987; 53 FR 35458, Sept. 15, 1988]

§ 108.503-5 Eligible and ineligible uses of 503 loan proceeds.

(a) *Eligible project cost* shall include the cost necessary to acquire, construct, convert or expand the plant, including land, site improvements (e.g. grading, streets, parking lots, utilities, landscaping), buildings, machinery and equipment and interest on interim financing (see § 108.503-7). Project costs shall also include professional fees directly attributable and essential to the project (e.g. surveying, engineering, architectural, legal, accounting). In projects involving construction, a contingency reserve not to exceed 10% of construction cost may be added to project cost. Upon completion of the project, if the unused contingency reserve exceeds 2% of the anticipated debenture amount, such amount will be reduced by the amount of such excess.

(b) *Eligible administrative costs*—Reserve account (§ 108.503-11(b)(2)), and processing fee (§ 108.503-6(a)(1)), closing costs including legal fees (§ 108.503-6(a)(2)), and CFA initiation fee (§ 108.503-11(a))—are not part of the project cost, but may be included in the 503 debenture amount (§ 108.503-9(a)(2)).

(c) *Ineligible costs.* Costs incurred by the 503 company or the small concern that are not necessary to the acquisition, construction or conversion of the plant are ineligible project costs and may not be financed with 503 debenture proceeds. Examples of such ineligible items, for illustration purposes only, are:

(1) *Management services.* While a small concern may engage a management firm for continuous assistance or counseling, the cost is ineligible for purposes of 503 project cost determination;

(2) Except as permitted in paragraphs (a) and (b) of this section, financing costs and fees including those associated with tax-exempt financing (e.g. finders fees, commitment fees, application fees, origination fees, trustee fees, advertising cost, underwriting expenses and related legal cost).

(3) Franchise fees and other costs that do not contribute directly to the physical asset.

(d) *Expenditures made in anticipation of a 503 loan.* (1) Except as provided in paragraph (d)(2) of this section, expenditures made in anticipation of a 503 loan prior to notice to SBA may not be included in project cost unless the applicant files a written notice with the 503 company and SBA within 60 days after expenditure or SBA gives written approval.

(2) Land previously acquired by the small concern or the 503 company may be contributed as the 503 company's injection in a project involving new construction. The value of the contribution shall be the contributor's equity in such land. If the land was acquired within two years before the submission of the related application for development company assistance to SBA, it shall be valued at the lesser of cost or market. If the land was acquired before such two-year period, its value may be determined by independent appraisal satisfactory to SBA. With such independent appraisal shall also be submitted a title report setting forth the purchase history of the land for the last five years before the date of such appraisal. None of the loan proceeds shall be used for reimbursement of the acquisition cost of the land.

(3) When notice is given to SBA prior to an expenditure, there is no time limitation.

(Reporting and recordkeeping requirements contained in paragraph (d)(2) have been approved by the Office of Management and Budget under control number 3245-0178)

[51 FR 20773, June 6, 1986, as amended at 53 FR 10244, Mar. 30, 1988]

§ 108.503-6 Costs which may be charged to the small concern by the 503 company.

(a) *Charges and fees.* Except as otherwise provided in § 108.503-7(b)(4), the following charges or fees on the 503 loan are permitted:

(1) *Loan processing fee.* The cost incurred by the 503 company for loan packaging, processing and non-legal staff functions related to loan closings shall be recovered through a processing fee not to exceed one and one-half percent (1.5%) of the net debenture proceeds, payable at closing (see also paragraph (b) of this section).

(2) Legal fees related to loan closing: *Provided, however,* That fees of counsel representing the 503 company in excess of $2,500 shall be borne by such company, unless SBA approves in writing a higher fee in a case of unusual complexity. Unless SBA approves otherwise in writing, all legal fees shall be based on time and hourly charges. Legal fees shall be collected by the 503 Company and paid to the closing attorney.

(3) A periodic service charge not to exceed 2 percent (2%) per annum on the outstanding balance of the 503 loan measured at 5 year anniversary intervals; *Provided, however,* That a service charge in excess of one-half of one (0.5) percent shall require the prior written approval of SBA, based on evidence satisfactory to SBA, of substantial need.

(b) *Deposits.* A 503 company may require a maximum deposit of $1,000 or 1½% of the net debenture proceeds, whichever is less, at the time it accepts an application for processing. A written agreement shall specify that the small concern shall receive a refund of the deposit when the 503 debenture proceeds are disbursed by the Central Fiscal Agent (see § 108.503-11), or within 10 days of denial if the loan is not approved. If the small concern decides to withdraw its application prior to funding, the 503 company is authorized to deduct administrative costs incurred in the packaging and processing of the loan request that are reasonable, necessary and documented before refunding any balance of the deposit.

(c) *Additional charge for private sector financing.* 503 companies may charge a one-time fee not to exceed one and one-half percent (1½%) of the non-Federal permanent financing (exclusive of 503 company injection) for services actually rendered by the 503 company pursuant to a written agreement setting forth the services to be performed by the 503 company. This amount, which is not included in eligible project costs, may be paid by the private sector lender or the small concern, but not both.

(d) *Assumption fee.* In the event the 503 or 504 loan is assumed by a substitute small concern with SBA's prior written approval, the 503 company may also, with SBA's prior written approval, charge an assumption fee to the transferor or the transferee of the loan of up to one percent of the outstanding indebtedness, whether or not a change in collateral is also involved.

(e) *Disclosure of charges to SBA.* The loan application submitted to SBA by the 503 company shall disclose the full amount of all fees and charges, together with names of the recipients and a description of the services rendered.

(Reporting and recordkeeping requirements in paragraph (d) have been approved by the Office of Management and Budget under control number 3245-0071)

[51 FR 20773, June 6, 1986, as amended at 52 FR 27677, July 23, 1987; 53 FR 10243, Mar. 30, 1988]

§ 108.503-7 Interim financing.

(a) *Certification of Project Completion.* Interim financing, except for that portion provided by injection, may be necessary for those projects involving construction or significant remodeling. Except as provided in paragraph (c) of this section, such projects shall be completed in accordance with the terms and conditions of the authorization before SBA issues its guarantee of the 503 debenture. Following completion of the project, the interim lender shall certify to the 503 company that it has no knowledge of an adverse change in the condition of the small concern since the issuance of the 503 authorization (SBA Form 1248). Conversely, if the interim lender has such knowledge, it shall advise the 503 company accordingly. The small concern shall certify to the 503 company whether there has been an adverse change in the condition of the small concern and shall furnish current interim financial statements. Before SBA issues its guaranty of the 503 debenture, the 503 company shall issue an opinion to the best of its knowledge whether an adverse change has intervened since SBA approval, including but not limited to:

(1) Deterioration of the borrower's financial condition to the extent that it would endanger the borrower's ability to meet debt service on the 503 loan.

(2) Fraud or misrepresentation as defined by § 108.7(a)(2) of this part by the small concern in the loan application and financial exhibits submitted to SBA.

(3) A filing under the Bankruptcy Code by or against the small concern.

(4) Assignment of the small concern's assets for the benefit of its creditors.

(5) Receivership of the small concern, imposed by a third party creditor.

(6) Forfeiture of the corporate charter of the small concern.

(7) Discontinuance of the business.

(b) *Source of interim financing.* There are no restrictions on the source of interim financing provided:

(1) The terms and conditions of such financing are acceptable to SBA;

(2) The interim lender is not associated with the small concern. (See definition in § 108.2 of this part.)

(3) SBA may require the interim loan to be managed by a third party such as a bank or professional construction manager, if the interim lender lacks the experience or qualifications to monitor construction and/or progress payments properly.

(4) A 503 company with adequate financial capacity may provide interim financing and may charge a reasonable rate of interest thereon.

(c) *Use of construction escrow account.* If acquisition of machinery and equipment or other portions of a project (e.g. a parking lot) represent a relatively minor portion of the total project and have been contracted for completion or delivery at a specified price and specific future date, the 503 Debenture may be sold and the proceeds authorized for acquisition of such assets may be held in escrow by the Central Fiscal Agent (see § 108.503-11) or a local title insurance company or bank. After approval by the 503 Company and the SBA, disbursements from such accounts shall be supported by invoices and made payable jointly to the small concern and the supplier in order to assure authorized use of debenture proceeds. Funds at a local institution remaining undisbursed after one year shall be returned to the Central Fiscal Agent for credit to the Reserve Account, see § 108.503-11(b)(2). For construction escrow under the 504 pilot program see § 108.504(i).

[51 FR 20773, June 6, 1986, as amended at 52 FR 27677, July 23, 1987; 53 FR 10243, Mar. 30, 1988]

§ 108.503-8 Third-party financing.

(a) *General.* Subject to § 108.503-4(c)(4) of this part, each project receives financing from three sources:

(1) Either directly or indirectly, from institutional lenders, private leaders or investors, Federal, State, local government sources or any combination of the foregoing (hereinafter referred to as third-party lenders or loans);

(2) The proceeds of a 503 or 504 debenture (see § 108.503-9); and

(3) The 503 Company injection (see § 108.503-10). The maximum participation of third-party lenders shall be required in each project

(b) *Terms of third-party financing.* (1) The maturity of the third-party loans shall be at least seven years when the Debenture is for a term of ten years and the project does not include real estate. Otherwise, such third-party loan maturities shall be for the greater of ten years or half maturity of the 503 debenture for other maturities. Balloon payme must be justified in the loan rep and clearly identified in the loan thorization. A balloon payment sh not be due in less than 10 years. T SBA must determine in writing th the balloon payment will not advers affect the small concern's ability satisfy its financial obligation to SB

(2) Where any part of the financi of a project is supplied by the seller property, such financing shall be su ordinate to the 503 loan.

(3) Any financing of a project sub dinate to the 503 loan shall not be p paid without SBA's prior written proval, which shall be based on a fin ing that such prepayment will su stantially benefit the small conce See also §§ 108.9, 108.503-4(c)(3) and 108.503-9(a)(5).

(4) SBA shall not participate in nancing a project unless the inter rate on the other financing is le and reasonable.

(5) The third-party loans may clude consolidation of existing debt the 503 project property: *Provid* That such pre-existing debt is not co sidered part of project cost, collater is adequate to fully protect the G ernment, and such consolidation do not result in upgrading the relat lien position of such pre-existing de

(6) SBA shall not participate in nancing a project unless the thi party lender has the capacity of, has arranged for, servicing adequate protect SBA's interests.

(7) The third-party lenders sh agree to notify SBA in writing with 30 days after a default and 60 da prior to a foreclosure sale.

(8) Except as otherwise permitted this part, SBA shall not participate a financing where the third-par lender(s) have a preference as scribed in § 120.301-1 of this chapt (See §§ 108.503-9(a)(5) and 108.50 13(c).)

(Reporting and recordkeeping requireme have been approved by the OMB under c trol number 3245-0192)

[52 FR 27677, July 27, 1987]

§ 108.503-9 503 Debenture financing.

(a) *Application.* Upon application (SBA Form 1244) to the field office serving the area where the small concern is located, SBA may guarantee debentures (SBA Form 1242) of the 503 company. The proceeds of such debenture shall be used to finance part of a fixed asset project for a small concern on either a loan or lease basis subject to the following conditions:

(1) *Purpose.* Subject to § 108.503(b), such debenture is issued for the purpose of assisting an identifiable small concern in accomplishing a sound business purpose in compliance with the regulations of this part.

(2) *Amount.* The aggregate amount of such debenture, rounded up to the nearest $1,000, shall not exceed the amount of the loan or loans to be made from the proceeds of the debenture other than any excess attributable to the eligible administrative costs (as specified in § 108.503-5) of such loan. The minimum amount of a 503 debenture that may be guaranteed by SBA shall be $50,000, unless SBA determines that a smaller debenture is reasonable and necessary. In no case shall a debenture be for less than $25,000.

(3) *Interest rate.* The interest rate on 503 debentures shall be a rate determined by the purchaser, but not less than a rate determined from time to time by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable U.S. obligations with comparable maturities. Such rate can be obtained from the appropriate SBA field office.

(4) *Maturity.* The maturity of the 503 debenture shall be 10, 15, 20, or 25 years. (For interrelation with private sector financing, see § 108.503-8(b)(1).)

(5) *Subordination.* SBA may permit the subordination of the 503 debenture(s) to any other debt or obligation of the 503 company: *Provided, however,* That any debt or obligation incurred by such company to satisfy the injection requirement (§ 108.503-10) shall be subordinated to the 503 debenture. (See also §§ 108.9, 108.503-4(c)(3), and 108.503-8(b)(3).)

(6) *Collateral.* All loans to small concerns provided from the proceeds of a 503 debenture shall be so secured (as determined by SBA) as to reasonably assure repayment. SBA shall require that the 503 company's injection pursuant to § 108.503-10 be subordinated to the loan made from the proceeds of the 503 debenture. In the event of default on the debenture, the liability of the 503 company shall be limited to all payments made by the small concern to the 503 company and the collateral securing the defaulted loan. All collateral shall be insured against such hazards and risks as SBA may require and the insurance policies shall provide for notice to the 503 company or to SBA in the event of their impending lapse.

(7) *Proof of use of proceeds.* At the time of closing of the debenture, the 503 company shall submit evidence satisfactory to SBA that the proceeds will be used in accordance with the statutory purpose. Such evidence shall include, but not be limited to a certification (SBA Form 1429) that proceeds will be used for eligible project costs and, if the Plant is owned by the development company, proof that the small concern has the right to use the plant for at least as long as the term of the debenture.

(8) *503 Loan conditions.* (i) A 503 loan may not exceed the lesser of forty percent of total project cost (as defined in § 108.503-5) plus administrative costs authorized under §§ 108.503-6(a)(1) and 108.503-11 (a) and (b)(2), or an amount which, together with the outstanding balance of all other SBA financings to any one small business concern and its affiliates (as defined in § 121.3(a) of this chapter) under section 7(a), 15 U.S.C. 636(a), does not exceed $750,000: *Provided, however,* That for good cause shown, SBA may authorize a 503 loan up to fifty percent. Such cause shall be deemed to exist if a project meets all three objectives of § 108.503(b) and it can be demonstrated to SBA's satisfaction that without such authorization the project would be lost to the community.

(ii) Each loan to be made from the debenture proceeds shall be approved by SBA.

(iii) The terms and conditions shall be sufficient to assure timely payments by the 503 company on the debenture. Payments received after the 15th of each month shall be subject to a late payment fee equal to 5% of the late amount of $100, whichever is greater, payable to the Central Fiscal Agent for remittance at SBA's direction. Late payments may be accepted without such late payment fee but such fee shall be received within 15 days thereafter to avoid a declaration of default.

(9) *503 lease conditions*. All conditions applicable to 503 loans set forth in this part shall be equally applicable to the leasing of assets by the 503 company to a small concern. In addition, the lease agreement between the 503 company and the small concern shall be for a term at least as long as the term of the 503 debenture; and the rent paid by the small concern during the term of the debenture shall be sufficient to retire principal and interest on all debts incurred by the 503 company in financing this project, and all related expenses, and may include a reasonable return on the 503 company's investment. (See also § 108.503-6 of this part.)

(10) *Loan/Debenture prepayment*. If the small concern exercises its right voluntarily to prepay the 503 loan, the 503 company shall prepay the 503 debenture in an amount sufficient to repay the corresponding balance of the debenture with interest and adjusted for any premium or discount provided for in such debenture. Where SBA for any reason prepays (repurchases) a 503 debenture secured by the note evidencing the 503 loan, any premium resulting from such purchase shall be treated as a recoverable expense and shall be considered as part of the indebtedness defined in such note. Any discount resulting from such repurchase shall reduce the indebtedness defined in such note.

(Reporting and recordkeeping requirements have been approved by the Office of Management and Budget under control number 3245-0071)

[51 FR 20773, June 6, 1986, as amended at 52 FR 27678, July 23, 1987; 53 FR 35458, Sept. 15, 1988]

§ 108.503-10 503 Company injection.

The 503 Company shall be required to inject into each project an amount equal to at least ten percent (10%) o the project cost exclusive of administrative cost (see § 108.503-5 (a) an (b)). Subject to § 108.503-4(c)(4), such injection may come from any source including the borrower small concern and may consist of cash, or property at the lower of contributor's cost o fair market value (see also § 108.503-5(d)). Any such contribution or loan to the 503 Company may not be conditioned on the granting of voting rights, stock options or any other actual or potential voting interest in the 503 Company or the small concern, but the 503 Company may issue shares of nonvoting stock in exchange therefor. The interest on such injection shall not exceed a rate which is legal and reasonable. Such injection shall be subordinate to the 503 debenture and shall not be repaid at a faster rate than the 503 loan.

[52 FR 27678, July 23, 1987, as amended at 53 FR 1468, Jan. 20, 1988; 53 FR 10243, Mar 30, 1988]

§ 108.503-11 Central fiscal agent.

(a) *Services of a central fiscal agent* SBA shall appoint a central fiscal agent (CFA) to act for the 503 company as the disbursement, collection and payment agent for 503 debentures and loans. The 503 company shall, in consideration of SBA's guaranty of the Debenture, contract with the CFA a its agent and abide by the CFA procedures established to receive and disburse proceeds from the sale of the debenture, to receive from the small concern 503 loan payments and remi such payments pursuant to SBA's instructions. Each small concern receiving a 503 loan shall abide by these CFA procedures. The CFA may charge an initiation fee as well as a monthly service fee, payable by the small concern, which shall be in addition to the fees and charges permitted by § 108.503-6 of this Part. The CFA service fee shall be negotiated pursuant to a contract between the CFA and SBA and shall be published from time to time in the FEDERAL REGISTER. In negotiating any changes in fees, the agency will accept public comments on these notices and consider such comments in establishing fees.

(b) *Accounts maintained by the CFA*—(1) *Escrow account.* The monthly installments received from the small concern shall be placed in an interest bearing escrow account, until such amounts are subject to withdrawal to meet the required semi-annual payment on the 503 debenture.

(2) *Reserve Account.* Upon sale of the debenture, an amount equal to two percent (2%) of the net debenture proceeds shall be placed in an interest bearing reserve account. Neither the reserve account nor any interest earned/accrued thereon shall be available to the small concern until the loan and the debenture have been fully paid: *Provided, however,* That when the balance of the account exceeds the outstanding balance of the 503 loan, such excess funds may be released to the small concern. In addition, sufficient funds from the reserve account may be released at the small concern's request to meet the small concern's Federal income tax liability relating to earnings on the reserved account if there is no shortage in the Reserve Account, and all monthly installments are current.

A small concern may make this request through its 503 company to the appropriate SBA field office at least 45 days prior to the filing of its Federal Income Tax Return. Such requests shall not be processed in amounts of less than $100.00.

(c) *Reserve and escrow account balances.* Any balance in either or both the reserve and escrow accounts shall be used to make debenture payments in the event the small concern is delinquent in meeting its monthly payments. Any remaining balance in either account shall be remitted to the small concern within 30 days after the 503 loan is paid in full.

§ 108.503-12 Loan closing.

The closing of the loan between the small concern and the 503 company is the responsibility of the 503 company. At such closing, the 503 company, with the consent of the small concern, appoints a Central Fiscal Agent (503 program) or a Central Servicing Agent (504 program), as the case may be, to receive and disburse all payments flowing among the transfer agent or trustee, the small concern, the 503 company and such agent according to the particular agency agreement (SBA Form 1254 or 1506). This agreement is subject to a Master Fiscal or Servicing Agent Agreement, as the case may be, concluded between SBA and such agent. The debenture closing is the joint responsibility of the 503 company and the SBA.

[52 FR 27678, July 23, 1987; 53 FR 10243, Mar. 30, 1988]

§ 108.503-13 Servicing loans and debentures.

(a) *General.* The 503 company shall service the 503 loan according to the related instruments and the loan authorization until paid in full, subject to the conditions specified herein.

(b) *Specific servicing functions.* The 503 company shall conform to servicing standards of prudent lending.

(1) The 503 company shall submit to SBA a quarterly written report on accounts in its portfolio which are sixty (60) days or more past due, explaining the reason(s) for non-payment, the steps that the 503 company is taking to bring the account(s) current, and advice regarding the payment status of all other financing involved in the project(s). Special interim reports will be provided by the 503 company upon request by SBA.

(2) The 503 company shall review the financial statements, the small concern's payment of taxes and insurance, U.C.C. filings, and shall make field visits as necessary, or as requested by SBA.

(3) Any other adverse trend, condition or information shall be reported to SBA promptly.

(c) *Prohibitions.* Without the prior written consent of SBA, the 503 company shall not—

(1) Make or consent to any substantial alteration in the terms of any 503 loan instrument;

(2) Make or consent to release of collateral;

(3) Accelerate the maturity of any note:

(4) Sue upon any loan instrument;

(5) Waive any claim against any borrower, guarantor, obligor, or standby

creditor arising out of any loan instrument;

(6) Directly or indirectly charge or receive any bonus, fee, commission, or other payment or benefit in connection with the making and servicing of any loan, except as authorized under this part;

(7) Increase the amount of any prior lien on property securing the 503 loan;

(8) Require or obtain any funds, certificates of deposit, compensating balance not under the unrestricted control of the small concern, or any other agreement establishing any preference in favor of the 503 company.

"Preference" as used herein, shall include but shall not be limited to any arrangement whereby the 503 company obtains a position superior to the position of SBA in the repayment of its injection pursuant to § 108.503-10. See § 108.503-8(b)(8).

(d) *Service fee.* The 503 company's monthly service fees (§ 108.503-6) are paid only from loan payments received. Such fees may be accrued without interest and collected by the 503 company from the CFA when the payments are made. Failure by the 503 company to comply with the reporting and servicing requirements contained in this part is a basis for withholding service and late fees. Willful or negligent noncompliance with the reporting and servicing requirement for ninety days or longer after the respective due dates shall authorize SBA to receive the fees withheld as compensation for its effort to obtain compliance.

(e) *Servicing deficiencies.* SBA shall provide written notice to the 503 company of any servicing or collection deficiencies. Such notice shall state the deficiencies and action to be taken that will correct such deficiencies. Should the 503 company fail to take such action, expenses and administrative costs incurred by SBA to correct such deficiencies may be assessed to and must be paid by the 503 company computed on a daily basis, not to exceed $250 per day: *Provided, however,* That this amount shall be reduced by the amounts withheld by SBA pursuant to paragraph (d) above.

(f) *Termination of fees.* If the 503 company persists in its failure to take
corrective action pursuant to p
graph (e) of this section, SBA s
have the right, pending suspension
revocation purusant to § 108.503-15
take over servicing of all or part of
503 company's portfolio or require
503 company to assign all or part of
portfolio to another 503 company.
such event, the assignor 503 comp
shall have no rights to any furt
fees which shall be paid to the tra
feree. If SBA does the servicing
shall collect the fees. In addition,
503 company's processing author
will be temporarily suspended.

(g) *Assumption of a 503 loan.* A
loan may be assumed by another sm
concern with SBA's prior written
proval. Such approval shall not be
reasonably withheld.

(h) *Deferments.* At the request of
503 company, SBA may agree to a
ferment of monthly payment(s) by
small concern at it sole discretion if
finds that without such deferment
small concern will become or rema
insolvent; with such deferment
small concern will become or rema
viable and the small concern agrees
compensate SBA for its cost in maki
such deferment, and to offer such
ditional security as SBA may requi
No such deferment shall be made fo
period exceeding six months, and m
be renewed if the preceding deferme
period has produced beneficial resul
In no event may such deferme
period exceed five years, nor may t
maturity of the Loan exceed twent
five years in the aggregate. In t
event of such deferment, SBA sh
undertake the 503 company's oblig
tion of timely payments of princip
and interest on the related 503 or 5
debenture, as the case may be.

[51 FR 20773, June 6, 1986, as amended
52 FR 27678, July 23, 1987; 53 FR 102
Mar. 30, 1988]

§ 108.503-14 Liquidation of 503 loans a security.

When a 503 loan is tranferred to l
uidation status by SBA, the servic
functions of the 503 company a
CFA may be terminated upon noti
by SBA: *Provided, however,* That t
503 company and SBA may negotia
an agreement whereby the 503 com

ny continues to service or to liquidate the loan on a fee basis.

§ 108.503-15 Oversight and evaluation; suspension and revocation.

(a) *Operational review.* Each 503 company shall be subject to operational review by SBA. Such review shall take place by appointment during the 503 company's regular business hours. The 503 company shall cooperate with SBA by making its staff, records, and facilities available.

(b) *Compliance audit.* Each 503 company shall be subject to compliance audits conducted, supervised or coordinated by the SBA Office of the Inspector General pursuant to the Inspector General Act (5 U.S.C. App. section 1, et seq.).

(c)—(d) [Reserved]

(e) *Revocation, suspension and other corrective actions*—(1) *Corrective actions.* SBA reserves the right to revoke the certification of any 503 company, to suspend temporarily the eligibility of any 503 company, or to require any other corrective action for a violation of law or SBA regulation, of the terms of a debenture or any agreement with SBA, or any inability to meet the operation requirements set forth in this part; but such action shall not invalidate any guarantee previously issued by SBA.

(2) *Suspension.* SBA shall give written notice at least 10 business days prior to the effective date of a suspension action. Such notice shall inform the 503 company of the opportunity for a hearing pursuant to Part 134 of this chapter.

(3) *Revocation and Appeal of Suspensions.* Revocation proceedings and appeals of suspension actions shall be conducted in accordance with the provisions of Part 134 of this chapter. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of §§134.32(b)(7) and 134.34.

[51 FR 20780, June 6, 1986, as amended at 53 FR 10243, Mar. 30, 1988]

ASSISTANCE UNDER SECTIONS 504 and 505

§ 108.504 Pilot program.

(a) *Statutory authority* for this section is section 504 of the Small Business Investment Act of 1958, 15 U.S.C. 697a.

(b) *Pilot program.* SBA is required to conduct a pilot program involving the sale to investors of 504 debentures or 505 certificates, as defined in § 108.2, either publicly or by private placement.

(c) *Purpose.* The terms and conditions upon which assistance may be rendered under the Pilot Program shall be for the same purposes and shall be the same as set forth in §§ 108.503 to 108.503-15 of this part, except as superseded by this section.

(d) *Term.* 504 debentures shall be issued only for maturities of ten (10) or twenty (20) years.

(e) *Central Servicing Agent.* SBA, in a master servicing agreement shall designate a Central Servicing Agent (CSA) to act for all 503 companies participating in the sale of 504 Debentures, to ensure uniformity and the orderly flow of funds among 504 loan recipients, 503 companies, and the Trustee or Transfer Agent (see § 108.505(f)(3) of this part). Pursuant to such master servicing agreement, in consideration of SBA'a guaranty of the 503 company's debenture(s), the 503 Company, with the borrower's consent, shall enter into a servicing agent agreement (504 program), SBA Form 1506, with the CSA. Execution of such form shall constitute acceptance by the 503 company and the borrower of the terms of the master servicing agreement. SBA Form 1506 shall prescribe the deposits into and the disbursements from a master reserve account, set up by the CSA pursuant to said master servicing agreement. The master reserve account shall be funded by a reserve deposit of one half of one percent (0.5%), and a funding fee of three eighths of one percent (0.375%) of the net debenture proceeds, see definitions in § 108.2 of this part, and by principal and interest payments of 504 loans. Funds in such account shall be used to defray expenses of the program described under paragraph (b) of this section, and SBA shall add funds pursuant to its guaranty to insure the full and timely payment of the debentures in the event the borrower fails to make full and timely payment on its 504 loan.

(f) *Prepayment by small concern.* If the Small Concern voluntarily exercises its right to prepay its 504 loan, it shall pay a prepayment premium incorporated into its Note (SBA Form 1505) equal to that required by the 504 Debenture. In the event of such voluntary prepayment, the 503 Company shall prepay the 504 Debenture with a like premium.

(g) *Termination of lease.* The termination of a lease to a small concern of property purchased by a 503 company with the proceeds of a 504 debenture pursuant to § 108.503-9(a)(9) of this part, for whatever reason, shall not require the prepayment of said 504 debenture unless the 503 company is unable to make the scheduled payments on said 504 debenture and SBA is unwilling to make such payments pursuant to its 503 guaranty. In such event SBA shall purchase said 504 debenture pursuant to paragraph (j) of this section.

(h) *Prepayment by 503 company.* The 503 company may elect to repurchase its 504 debenture as a whole but not in part, in accordance with SBA's instructions, at a price equal to the aggregate of the outstanding principal balance, unpaid interest and, if applicable, a prepayment premium stated in such debenture.

(i) *Use of construction escrow account.* If acquisition of machinery and equipment or other portions of a project (e.g. a parking lot) represent a relatively minor portion of the total project and have been contracted for completion or delivery at a specified price and specific future date, the 504 Debenture may be sold and the proceeds authorized for acquisition of such asset may be held in a special interest bearing escrow account by the Central Servicing Agent (see paragraph (e) of this section), or a local title insurance company or bank. After approval by the 503 Company and the SBA, disbursement from such accounts shall be supported by invoices
and made payable jointly to the sm
concern and the supplier in order
assure authorized use of debent
proceeds. Unless sooner disbursed
cording to the terms of the escrow
unless SBA approves otherwise, s
funds shall remain in such escr
until final payment on the 504 deb
ture. See § 108.503-7(c) for escrow
the 503 program.

(j) *Purchase by SBA.* Upon the
currence of an automatic event of
fault as specified in the note evide
ing the 504 loan, such note sh
become immediately due and payab
Upon the occurrence of an event of
fault specified in such note which do
not require automatic acceleratio
SBA may forbear acceleration of t
note in an attempt to resolve the
fault in cooperation with the 503 co
pany and the small concern. For t
mination of a lease, see paragraph
of this section. Upon acceleration
the note in either case, the 504 debe
ture shall be accelerated and becon
immediately due and payable. In suc
event SBA shall purchase the 504 d
benture at a price equal to the the
outstanding principal balance pl
unpaid interest thereon, as of the tim
of such purchase, without premiu
SBA shall not be required to rei
burse the investor for any premiu
paid for 504 debentures or 505 certificates.

(k) *Termination of interest.* Intere
on 504 debentures prepaid pursuant
paragraph (f) of this section, or pu
chased by SBA pursuant to paragra
(g) of this section, shall accrue on
through the date of such prepayme
or purchase.

(l) *Marketing 504 debentures.* Sectio
108.505 (f) through (l) of this pa
shall also apply to individual 504 d
bentures sold to investors.

[51 FR 20782, June 6, 1986, as amended
52 FR 27678, July 23, 1987; 53 FR 102
Mar. 30, 1988]

§ 108.505 Debenture pool certificates (5 certificates).

(a) *Statutory authority* for this se
tion is section 505 of the Small Bu
ness Investment Act of 1958, 15 U.S.
697b.

(b) *Purpose.* Section 505 of the Small Business Investment Act authorizes SBA or its agent to issue certificates representing ownership of all or a fractional part of a pool or trust composed of 504 debentures. Such certificates shall be sold to investors either publicly or by private placement.

(c) *Guaranty.* SBA is authorized to guarantee the timely payment of principal and interest on 505 certificates, not to exceed the outstanding principal and interest on the guaranteed debentures which comprise the pool. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee of such certificates. No State or local law, and no Federal law shall preclude or limit SBA's exercise of its ownership rights in the pooled debentures and related collateral.

(d) *Prepayment.* In the event of prepayment or SBA purchase pursuant to § 108.503 (f), (h) or (j), as the case may be, proceeds shall be passed through *pro rata* to the holder(s) of such certificates, and SBA's guaranty shall be proportionately reduced. In the event all 504 debentures constituting the pool are so paid off, SBA may call all certificates backed by such Pool for cancellation.

(e) *505 certificates* shall be initially issued in amounts of at least one hundred thousand dollars ($100,000). Such certificates shall be issued in registered form, and shall be transferable only by entry on the central registry maintained pursuant to paragraph (f)(3) of this section. No such transfer shall take place within 10 business days before any payment date. Payment on such certificates shall be made only to registered holders.

(f) *Agents.* SGA will appoint or cause to be appointed agent(s) to perform functions necessary to market and service Debentures sold pursuant to § 108.504(b) of this part or 505 Certificates sold pursuant to § 108.505(b) of this part.

(1) *Selling agent.* As a condition of guaranteeing a 504 Debenture, SBA shall cause each 503 Company to appoint a Selling Agent to perform functions which include but are not limited to:

(i) Establishing performance criteria for Poolers and select qualified entities to become Poolers. Such action shall be subject to SBA prior written approval and paragraph (g) of this section.

(ii) Receiving guaranteed debentures, negotiate the terms and conditions of periodic offerings of 504 Debentures and/or 505 Certificates with Poolers on behalf of 503 Companies.

(iii) Directing and coordinating periodic sales of 504 Debentures and/or 505 Certificates.

(2) *Fiscal agent.* SBA shall appoint a Fiscal Agent to:

(i) Monitor and evaluate the financial markets to determine those factors that will minimize or reduce the cost of funding 504 Debentures.

(ii) Arrange for the production of the Offering Circular, certificates, and such other documents as may be required from time to time.

(iii) Monitor the performance of the transfer agent or the trustee and the Poolers.

(iv) Perform such other functions as SBA from time to time may prescribe.

(3) *Transfer agent or trustee.* SBA shall appoint a transfer agent or trustee to:

(i) Issue 505 Certificates in the form prescribed by SBA at the time of the primary sale of Debentures.

(ii) Effect the transfer of 505 Certificates upon resale in secondary market transactions.

(iii) Maintain physical possession of the 504 Debentures for SBA and the Certificate holders.

(iv) Establish and maintain a system for central registration of:

(A) Debenture Pools including identification of interest rate payable on the Debentures that are included in each Pool, identification of the development companies which are obligors of such Debentures and which may not be disclosed without SBA's prior written approval;

(B) 505 Certificates issued or transferred with respect to each sale including identification of the Pool backing the Certificate, name and address of such Certificate purchaser, price paid by each purchaser, the interest rate on such Certificates and fees or charges assessed by the transfer agent or trustee;

(C) Brokers and dealers in 505 Certificates and commissions, fees or discounts granted to such brokers of or dealers in such Certificates, and

(D) Other information as SBA may from time to time prescribe.

(v) Receive semi-annual payments of amounts due on 504 Debentures, or amounts paid under voluntary prepayments or prepayments by SBA pursuant to § 108.504 (f), (h) and (j) of this part.

(vi) Make periodic payments to registered holders of 504 Debentures or 505 Certificates as scheduled or required by their terms and pay all amounts required to be paid upon prepayment of 504 Debentures.

(vii) Before any resale of such Debenture(s) or Certificate(s) is recorded on the registry, assure that the seller has disclosed to each purchaser in writing information required to be disclosed by § 108.505(j) of this part.

Each Agent and Trustee shall provide a fidelity bond or insurance in such amount as necessary to fully protect the interest of the government."

(4) *Central servicing agent.* See § 108.504(e) of this part.

(g) *Pooler.* Each Pooler shall:

(1) Be regulated by a Federal financial regulatory agency, or be a member of the National Association of Securities Dealers (NASD);

(2) Have a net worth in accordance with the requirements of the appropriate regulatory authority and have the financial capability to market 504 Debentures and 505 Certificates;

(3) Maintain its books and records in accordance with generally accepted accounting principles and in accordance with the guidelines promulgated by the regulatory body governing its activities;

(4) Conduct its business operations in accordance with accepted securities or banking industry practices, ethics, and standards and applicable SBA regulations;

(5) Be in good standing with SBA as determined by the SBA Associate Administrator for Finance and Investment (see paragraph (l) of this section) and with any Federal regulatory body governing the entity's activities or with NASD, if it is a member.

(h) *Access to records.* The agents appointed pursuant to §§ 108.504(e) and 108.505(f) shall make all books, records, and related materials associated with 504 Debentures or 505 Certificates available to SBA for review and copying purposes. Such access shall be at the place of business during normal business hours.

(i) *Fees and charges.* In addition to those fees delineated in § 108.503-6 of this part, fiscal or transfer Agent fees and other fees and charges necessary to market and service debentures sold pursuant to § 108.504(b) of this part or 505 Certificates pursuant to § 108.505(b) of this part may be assessed to the recipient of the 504 loan or charged to the purchaser of the debenture or certificate. Such fees shall be approved by SBA and shall be published from time to time in the FEDERAL REGISTER.

(j) *Disclosure statement.* Prior to any sale of a 505 Certificate, the seller, or the broker or dealer as agent for the seller, shall in the form prescribed or approved by SBA, disclose to the purchaser of such certificate information on the terms, conditions and yield of such certificate including information on any premium or other characteristics not guaranteed by SBA.

(k) *Prohibition.* In addition to § 108.4(d) of this part, a 504 loan recipient or any associate of such small concern, as defined in § 108.2 of this part, may not purchase the Debenture which funded its 504 loan. In such cases, SBA shall have the option of canceling its guarantee of such 504 Debenture. Also see §§ 108.7 and 108.503-15(e) of this part.

(l) *Suspension or revocation of brokers and dealers.* (1) SBA may exclude from the sale and all other dealings in 504 debentures or 505 certificates, any broker or dealer:

(i) If such broker's or dealer's authority to engage in the securities business has been revoked or suspended by a supervisory agency. When such authority has been suspended such broker or dealer will be suspended by SBA for the duration of such suspension by the supervisory agency.

(ii) If such broker or dealer has been
ıdicted or otherwise formally charged
ith a misdemeanor or felony bearing
n its fitness to participate in the
arket for 504 debentures or 505 cer-
ficates, such broker or dealer may be
ıspended while the charge is pend-
g. Upon conviction, participation
ay be terminated.

(iii) When such broker or dealer has
ffered an adverse final civil judg-
ent, holding that such broker or
ealer has committed a breach of trust
violation of law or regulation pro-
cting the integrity of business trans-
tions or relationships, participation
the market for 504 debentures or
5 certificates may be terminated.

iv) When such broker or dealer has
iled to make full disclosure of the in-
rmation required by § 108.505(j) of
is part, such broker's or dealer's par-
ipation in the market for 504 deben-
res or 505 certificates may be termi-
ted.

2) Proceedings to terminate such
oker's or dealer's participation in
e market for such certificates shall
conducted in accordance with Part
of this title. SBA may, for any of
e reasons stated above, suspend the
vilege of any broker or dealer to
rticipate in this market. SBA shall
e written notice at least ten (10)
siness days prior to the effective
e of such suspension. Such notice
all inform the broker or dealer of
opportunity for a hearing pursu-
to Part 134 of this chapter. The
sistant Administrator of the Office
Hearings and Appeals or an Admin-
rative Law Judge of such office
all be the reviewing official for pur-
es of §§ 134.32(b)(7) and 134.34.

FR 20782, June 6, 1986, as amended at
FR 27679, July 23, 1987; 53 FR 1468, Jan.
1988; 53 FR 10243, Mar. 30, 1988]

RT 110—INVESTIGATIONS; SMALL USINESS INVESTMENT COMPANIES

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.1 Scope of rules.
.2 Right to copy of data or transcript of testimony.
.3 Counsel for witnesses in investigations.
.4 Suspension or disbarment of counsel.
Sec.
110.5 Information obtained in investigations.
110.6 Service of subpoena.
110.7 Witness fees.

Authority: Sec. 308, 72 Stat. 694, as amended, sec. 310, 75 Stat. 755, as amended (15 U.S.C. 687, 687b).

Source: 27 FR 464, Jan. 17, 1962, unless otherwise noted.

§ 110.1 Scope of rules.

(a) The following rules govern investigations under section 310(a) of the Act. Where, from examinations made pursuant to section 310(b) of the Small Business Investment Act, as amended, complaints received from members of the public, examination of filings and reports made with the Administration, or otherwise, it appears that there may be a violation of the Small Business Investment Act, as amended, or the regulations thereunder, or where it appears that there is a likelihood that a violation has been or is about to be committed, the Administration may order a formal investigation if it is deemed necessary. Unless otherwise ordered by the Administration, the investigation is nonpublic and the reports thereon are for the Administration's use only.

(b) Where it appears after investigation or otherwise that there has been a violation of the provisions of the Small Business Investment Act, as amended, or SBA regulations pursuant thereto, the Administration is authorized to institute adjudicative proceedings for (1) the revocation or suspension of the license of a licensee for false statements knowingly made or willful and repeated violations, under section 309(a) of the Act; (2) the entry of cease and desist orders against a licensee or other person for completed or incipient violations, under section 309(b) of the Act; and (3) the entry of an order under section 313 of the Act removing from office a director or officer of a licensee for willfully and knowingly committing a substantial violation or substantial breach of fiduciary duty which involves personal dishonesty (the respondent also being subject to suspension from office in order to protect the licensee or the interests of SBA, pending completion of formal removal proceedings). Such proceedings shall be conducted in accordance with the provisions of Part 134 of this chapter by an Administrative Law Judge of the Office of Hearings and Appeals, who shall issue an initial decision in the case. The Administrator shall be the reviewing official for purposes of § 134.34. The respondent's failure to file a timely motion in accordance with §§ 134.19 and 134.21, requesting that the matter be scheduled for an oral hearing, shall constitute waiver of the right to an oral hearing but shall not prevent the submission of written information and argument for the record in accordance with the provisions of Part 134. By service of written notice under section 313(e) of the Act, SBA may also suspend from office a director or officer of a licensee who is charged with a felony in any indictment, information, or complaint authorized by a U.S. attorney, such suspension from office to remain in effect pending the final disposition of the criminal charges involved. SBA may bring a civil action under section 308(d) of the Act for a judicial determination of licensee's violations as a basis for SBA's revocation of its license. A civil action may be instituted by SBA under section 315(a) of the Act for the recovery of civil penalties based on licensee's failure to file reports required by any regulation or written directive of the Administrator. SBA may institute a civil action under section 311 of the Act for injunctive relief against a licensee or other person which has engaged or is about to engage in acts or practices constituting violations and, wherever appropriate, for the appointment of a receiver to administer the licensee's assets under the direction and pursuant to the exclusive jurisdiction of the court. SBA may also bring a civil action under section 311 or administrative proceedings against a director, officer, or other principal of a licensee who is ineligible to serve for the reasons stated in section 314(c) of the Act.

[32 FR 6091, Apr. 18, 1967, as amended at 49 FR 33628, Aug. 24, 1984]

§ 110.2 Right to copy of data or transcript of testimony.

A person who has submitted data or evidence in such investigations shall be entitled to retain or procure a copy of his data or a transcript of his testimony on payment of the prescribed fees; provided, however, in the case of nonpublic investigations such person shall file a written request stating the reason for desiring to procure such copy or transcript. The Administration may in any nonpublic investigatory proceeding for good cause deny such request. In the latter event, such person, upon proper identification, shall have the right to inspect the official transcript of his testimony.

§ 110.3 Counsel for witnesses in investigations.

Any person compelled to appear in person at an investigation designated in paragraph (a) of § 110.1 may be accompanied, represented and advised by counsel, but such counsel may not represent any other witness or any person being investigated, unless permitted in the discretion of the officer conducting the investigation or of the Administration upon being satisfied that there is no conflict of interest in such representation and that the presence of identical counsel for other witnesses or persons being investigated would not tend to hinder the course of the investigation.

§ 110.4 Suspension or disbarment of counsel.

The Administrator for good cause shown may, in accordance with the procedures set forth in Part 134 of this chapter, reprimand, suspend or disbar counsel from practice before the Administration because of contemptuous conduct, dilatory tactics or other improper conduct in the course of an investigation.

[29 FR 15199, Nov. 11, 1964, as amended at 49 FR 33629, Aug. 24, 1984]

§ 110.5 Information obtained in investigations.

Information or documents obtained by the Administration in the course of any investigation shall, unless made a matter of public record, be deemed nfidential. Officers and employees e hereby prohibited from making ch confidential information or documents or any other non-public records the Administration available to ayone other than an officer or employee of the Administration, unless e Administration authorizes the disclosure of such information or the proction of such documents as not ing contrary to the public interest. ay officer or employee who is served th a subpoena requiring the disclore of such information or the proction of such documents shall pear in court and, unless the auorization described in the preceding ntence shall have been given, shall spectfully decline to disclose the inrmation or produce the documents lled for, basing his refusal upon this ction. Any officer or employee who served with such a subpoena shall omptly advise the Administrator of e service of such subpoena, the ture of the information or documents sought, and any circumstances iich may bear upon the desirability making available such information documents.

10.6 Service of subpoena.

Service of subpoenas issued in an instigative proceeding shall be effect- in the manner prescribed by 34.25(c) of this chapter for the serv- of subpoenas in adjudicative pro- edings.

FR 15199, Nov. 11, 1964, as amended at FR 33629, Aug. 24, 1984]

10.7 Witness fees.

Vitnesses in an investigative pro- eding shall be paid the same fees d mileage as are paid witnesses in courts of the United States.

FR 15199, Nov. 11, 1964]

'ART 111—POLLUTION CONTROL

.1 Statutory provisions.
.2 Policy.
.3 Definitions.
.4 Eligibility.
.5 Procedure for guarantee applications.
.6 Participation agreement.
Sec.
111.7 Terms of guarantee and fee.
111.8 Qualified contract.
111.9 Minimization of losses.
111.10 Payments of installments in default.

AUTHORITY: 15 U.S.C. 687(c).

SOURCE: 43 FR 33232, July 31, 1978, unless otherwise noted.

EDITORIAL NOTE: For nomenclature changes to this part see 45 FR 39497, June 11, 1980.

§ 111.1 Statutory provisions.

The statutory provisions will be found at 15 U.S.C. 694-1 and 694-2.

§ 111.2 Policy.

It is the intent of Congress to assist existing small concerns which are or are likely to be at an operational or financing disadvantage with other business concerns with respect to the planning, design, or installation of pollution control facilities, or the obtaining of financing therefor, by authorizing SBA to guarantee fully (100 percent), directly or in cooperation with others, the periodic payments due in connection with the purchase or lease of such facilities under a Qualified Contract. The guarantee shall be a full faith and credit obligation of the United States, and may be issued notwithstanding that the pollution control Facility is acquired by the use of proceeds from tax-exempt industrial revenue bonds.

[51 FR 20248, June 4, 1986]

§ 111.3 Definitions.

Terms defined in this section are capitalized throughout this part. For the purposes of this part: "*Administration*" means the Small Business Administration.

"*Default*" means failure of the Small Concern to make payment of the guaranteed amounts due within the time required under a qualified contract.

"*Escrow*" means an amount, not to exceed one-fourth of the average annual payments for which a guarantee is issued, to be held by a trustee or SBA, and which shall be available to meet any payments in default, or if no default in payment occurs during the term of the qualified contract, to be applied (with accrued interest, if any) toward final payments under the qualified contract.

"*Facility*" means such property (both real and personal) as the Administration in its discretion determines is likely to help prevent, reduce, abate, or control noise, air or water pollution or contamination by removing, altering, disposing, or storing pollutants, contaminants, wastes, or heat, and such property (both real and personal) as the Administration determines will be used for the collection, storage, treatment, utilization, processing, or final disposal of solid or liquid waste, including any related resource recovery property when such recovery property is stated to be useful for pollution abatement by a local, State or Federal environmental regulatory authority.

"*Guarantee Fee*" means the fee, payable to SBA upon issuance of the guarantee, of not more than 3½ percent of the minimum annual guaranteed payments under any qualified contract (see § 111.7(d) of this part).

"*Issuer*" (when industrial revenue bond financing is used) means the duly constituted State or municipal authority which is authorized to issue industrial revenue bonds.

"*Participant*" means any company sharing the risk of loss under the guarantee with SBA pursuant to § 111.6.

"*Person*" includes corporations, companies, associations, cooperatives, firms, partnerships, societies, joint stock companies, States, agencies, territories and possessions of the United States or subdivisions of any of the foregoing, and the District of Columbia, as well as individuals.

"*Processing and administrative fee*" means a fee payable to SBA to defray processing and administrative expenses connected with each application (see § 111.7 (c) and (e) of this part).

"*Qualified contract*" means a lease, sublease, loan agreement, installment sales contract, or similar instrument, meeting the requirements of § 111.8, entered into between a Small Concern and any person.

"*SBA*" means the Small Business Administration.

"*Small Concern,*" including its affiliates (as defined in § 121.3-2(a) of this chapter), means a concern which qualifies as a small business under § 121.3-16 of this chapter. The usage of the singular "Small Concern" includes the plural.

"*Sponsor*" (if any) means a commercial bank (usually the bank of account of the Small Concern) which assists the Small Concern in preparing its application for SBA assistance. The sponsor reviews and analyzes the credit and financial data of the Small Concern and issues an opinion (1) on the Small Concern's creditworthiness in accordance with its and SBA's established credit criteria and requirements, and (2) as to the operational or financing disadvantage of the Small Concern for the financing required.

"*Trustee*" (when industrial revenue bond financing is used) means the trustee under an indenture between the issuer and such trustee relating to the issuer's bonds.

[43 FR 33232, July 31, 1978, as amended at 45 FR 6406, Jan. 28, 1980; 45 FR 39497, June 11, 1980]

§ 111.4 Eligibility.

In order to be eligible for a guarantee under this part the Small Concern must:

(a) Be independently owned and operated and not dominant in its field and must be eligible under SBA loan policy, as defined in Part 120 of this chapter.

(b) Together with its affiliates (as defined in § 121.3-2(a) of this chapter) qualify as a small business as defined in § 121.3-16 of this chapter.

(c) Be at an operational or financial disadvantage with other business concerns with respect to the planning, design, or installation of pollution control facilities, or the obtaining of financing therefor, or likely to suffer such disadvantage;

(d) Have been in operation for at least five years, and have a history of profitable operations during any three of the last five years preceding the date of the application, or provide evidence to support a determination by SBA that the equivalent of such operation exists.

(e) Provide evidence from a local, State or Federal environmental regulatory authority that the Facility meets the terms of the definition above.

[45 FR 39497, June 11, 1980]

§ 111.5 Procedure for guarantee applications.

(a) *Form:* An application for guarantee shall be made on SBA form 1136 and shall include all pertinent information required in supporting schedules and exhibits.

(b) *Place of filing:* The application shall be submitted to the Sponsor (if any) in triplicate, for transmission to SBA. Applications involving industrial revenue bond financing shall be filed at SBA's Central Office (1441 L Street NW., Washington, D.C. 20416). Other applications shall be filed at the SBA field office having jurisdiction over the principal place of business of the applicant Small Concern.

(c) *Approval or denial of applications:* No application for guarantee shall be approved unless the following conditions are met to SBA's satisfaction:

(1) Each application must be accompanied by a legible copy of the qualified contract (including supporting material).

(2) There is a reasonable expectation that the Small Concern will perform all the terms, covenants, and conditions of the qualified contract.

(3) The terms, covenants, and conditions of the qualified contract have been approved by SBA.

(4) SBA will not guarantee or participate in any guarantee when the sponsor or any participant, or an associate (as defined in § 120.1(d) of this chapter) of either, has a direct or indirect interest in the Small Concern.

(5) SBA will not guarantee or participate in guaranteeing any obligation under a qualified contract for the purpose of financing, directly or indirectly, the purchase of real or personal property or of services from any participant or sponsor or any of their associates, unless SBA shall have first made a written determination that the purchase of the property or services is in the best interests of the Small Concern.

(6) SBA will not guarantee or participate in the guarantee of the refinancing of an existing obligation relating to a facility unless SBA shall have first made a written determination that the terms of the existing obligation are causing an operational or financing disadvantage to the Small Concern, that refinancing on the terms proposed will relieve such disadvantage and will not violate § 120.2(d)(1) of this chapter and that the refinancing is not available without SBA's guarantee or participation.

§ 111.6 Participation agreement.

SBA may enter into a participation agreement with a qualified surety company or other qualified company to share in the risk of loss under the guarantee.

§ 111.7 Terms of guarantee and fee.

(a) The repayment period will be in accordance with the applicant's ability to repay, but shall not exceed 30 years.

(b) The required financing to be guaranteed shall not exceed $5,000,000 in principal.

(c) The processing and administrative fee relating to industrial revenue bond financing will be computed as follows: $550 + ($30 × number of years of Qualified contract). Each application shall be accompanied by $250 of the processing and administrative fee which is not refundable. The balance of the processing and administrative fee is payable to SBA upon issuance of its guarantee.

If the application is approved, SBA may issue a commitment to guarantee which shall expire not later than 24 months from the date of the commitment.

(d) The guarantee fee shall be 3½ percent of the minimum annual guaranteed payments under the qualified contract and shall be payable to SBA upon the issuance of the guarantee. The fee of 3½ percent shall not be computed on escrowed funds. The guarantee fee will be computed as follows: (total amount of payments (principal and interest) less: one-fourth of the average annual payments (escrow)) × 3.5 percent.

(e) The processing and administrative fee for the guarantee of financing, other than industrial revenue bond-related financing, shall be established and published in the future, but in no event shall the fee be less than $250.

[43 FR 33232, July 31, 1978, as amended at 45 FR 6406, Jan. 28, 1980]

§ 111.8 Qualified contract.

To be qualified, a contract shall provide: (a) For the acquisition, installation, planning, design, or financing of a facility.

(b) For any lien or security interest in the facility that may be determined necessary by SBA.

(c) Identification of the parties; description and location of the facility, the principal basic indebtedness therefor to be guaranteed (exclusive of those costs or expenses listed in paragraph (d) of this section), the rate of interest thereon and the number, amount and time of payments, which shall be in substantially equal amounts not less frequently than quarterly.

(d) That the Small Concern shall pay all costs related to the use, operation, maintenance, repair of, taxes, or other liens on the facility, licenses, insurance of any kind, or any expenses in connection with additions, substitutions, or modifications of the facility or any part thereof, in order that the payments to be guaranteed shall be net of the aforesaid expenses.

(e) That costs or expenses exceeding the estimated costs or expenses set forth in the application shall be borne by the Small Concern.

(f) That all available manufacturer's warranties shall vest in the Small Concern upon its acquisition of possession or title to the facility or any part thereof.

(g) That the Small Concern pay to the trustee (if any), or an escrow agent selected jointly by SBA and the Small Concern, an amount equal to one-fourth of the average annual guaranteed payments which shall be held in escrow by the escrow agent and invested in direct obligations of, or obligations guaranteed as to principal and interest by, the United States, or in insured savings accounts (up to the amount of the insurance) in any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation. Escrowed funds not so invested shall be deposi ed in a bank insured by the Feder Deposit Insurance Corporation or ma be (a) invested in time certificates o deposit maturing within 1 year or les issued by any bank which is so insured, or (b) deposited in a savings account of such bank. Such escrow amount plus interest thereon, if any shall be drawn upon to meet any payments on which the Small Concern i in default, or if no default occurs, fo application toward final payment Any withdrawals which cure default shall be replenished by the Small Concern. In the case of applications which are not related to industrial revenu bond financing, SBA may require th applicant to make a cash down payment.

(h) That the obligations of the Small Concern to make the payment are absolute and unconditional; that the Small Concern shall have no lega right of setoff, recoupment or counterclaim against any person; that the obligation shall continue absolute and unconditional in the event of total o partial condemnation of the facility o the use thereof, or total or partial destruction of the facility by fire o other hazard.

(i) Clauses setting forth events of default and their consequences, including acceleration of the due date of the payments in the aggregate.

(j) The consent of the Small Concern to SBA's succession to the right of the person providing the facilitie for the purpose of collecting from the Small Concern in default, payment which are in arrears and with respect to which such person has received payments under the guarantee. Any collateral hypothecated as security to such person shall immediately vest in SBA as security for its payment o payments.

(k) An agreement by the Small Concern to keep the facility insured against such perils in such amounts as is customary and usual for other businesses insuring similar property.

(l) A statement that the instrument contains the entire agreement of the parties, and stipulation of the governing law.

[43 FR 33232, July 31, 1978, as amended at 45 FR 6406, Jan. 28, 1980]

§ 111.9 Minimization of losses.

Based on the useful life of the facility, its identity as an assembled or identifiable unit of real or personal property and such other factors as may be appropriate, SBA shall determine during the processing of the application whether the person (or trustee) relying upon the guarantee shall mitigate losses caused by uncured defaults in the qualified contracts. Provided SBA has made an affirmative determination that losses shall be mitigated, upon the occurrence of a default in payment under the qualified contract, the person (or trustee) relying upon the guarantee shall, as a condition precedent to enforcing any claim under the guarantee, utilize the entire period, for which there are funds available in escrow, in reasonably diligent efforts to eliminate or minimize losses and no claim shall be made or paid under the guarantee until such effort has been made and such escrow funds have been exhausted. Generally, reasonably diligent efforts will consist of such actions as the person (or trustee) would take if the payments were not guaranteed, and may consist of advertising the facility for sale, lease, or rent or the retention of agents or brokers to salvage the value of the property for application of the proceeds on the amount guaranteed.

§ 111.10 Payments of installments in default.

After the escrow, if any, and interest thereon, if any, has been utilized to meet payments on which the small concern is in default, the person (or trustee) relying upon the guarantee shall file a claim with SBA for each additional payment in default thereafter. SBA will pay the defaulted payments 15 days prior to the due date of interest payment specified in the industrial revenue bonds (if any), or in the qualified contract if no industrial revenue bond is involved, until maturity, or until the resumption of full payments by the small concern, or its successor or, if the default is cause for acceleration of the indebtedness in the qualified contract, SBA may elect to pay the aggregate amount guaranteed and repossess the facility or cause it to be repossessed for use in mitigating losses. The small concern shall repay SBA for all payments made under the Pollution Control Guarantee at a rate of interest determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the then remaining maturity of the small concern's defaulted obligation.

(Sec. 308(c) of the Small Business Investment Act, as amended, 15 U.S.C. 687(c))

[43 FR 33232, July 31, 1978, as amended at 46 FR 24931, May 4, 1981]

PART 112—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF SBA—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Sec.
112.1 Purpose.
112.2 Application of this part.
112.3 Discrimination prohibited.
112.4 Discrimination in employment.
112.5 Discrimination in providing financial assistance.
112.6 Discrimination in accommodations or services.
112.7 Illustrative applications.
112.8 Assurances required.
112.9 Compliance information.
112.10 Conduct of investigations.
112.11 Procedure for effecting compliance.
112.12 Effect on other regulations; forms and instructions.
Appendix A

Authority: Sec. 602, 78 Stat. 252 (42 U.S.C. 2000d-1).

Source: 30 FR 298, Jan. 9, 1965, unless otherwise noted.

§ 112.1 Purpose.

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any financial assistance activities of the Small Business Administration to which the Act applies.

§ 112.2 Application of this part.

(a) This part applies to all recipients of assistance under programs administered by the Small Business Administration. (See Appendix A)

(b) The term "Federal financial assistance" includes: (1) Grants and loans of Federal funds; (2) the grant or donation of Federal property and interests in property; (3) the detail of Federal personnel; (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration, or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(c) This part does not apply to financial assistance extended by way of insurance or guarantee.

(d) The terms "applicant" and "recipient" mean, respectively, one who applies for and one who receives any of the financial assistance under any of the statutes referred to in paragraph (a) of this section. The term "recipient" also shall be deemed to include "subrecipients" of SBA financial assistance, i.e., concerns which secondarily receive financial assistance from the primary recipients of such financial assistance.

[30 FR 298, Jan. 9, 1965, as amended at 38 FR 17934, July 5, 1973; 50 FR 1441 Jan. 11, 1985]

§ 112.3 Discrimination prohibited.

(a) *General.* To the extent that this part applies, no person in the United States shall, on the ground of race, color or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination by any business or other activity.

(b) *Specific discriminatory actions prohibited.* (1) To the extent that this part applies, a business or other activity may not, directly or through co tractual or other arrangements, c ground of race, color or nation origin:

(i) Deny an individual any service financial aid or other benefit provide by the business or other activity;

(ii) Provide any service, financial ai or other benefit to an individual whic is different or is provided in a diffe ent manner, from that provided t others by the business or other activ ty;

(iii) Subject an individual to segrega tion or separate treatment in an manner related to his receipt of an service, financial aid or other benefi from the business or other activity;

(iv) Restrict an individual in an way in the enjoyment of any advan tage or privilege enjoyed by others re ceiving any service, financial aid o other benefit from the business o other activity;

(v) Treat an individual differentl from others in determining whethe he satisfies any admission, enrollment quota, eligibility, membership or othe requirement or condition which individuals must meet in order to be provided any service, financial aid o other benefit provided by the busines or other activity.

(2) The enumeration of specifi forms of prohibited discrimination i this paragraph does not limit the generality of the prohibition in paragrap (a) of this section.

(3) This regulation does not prohibi the consideration of race, color, or national origin if the purpose and effec are to remove or overcome the consequences of practices or impediment which have restricted the availabilit of, or participation in, the program o activity receiving Federal financial assistance, on the grounds of race, color or national origin. Where previous discriminatory practice or usage tends on the grounds of race, color, or national origin, to exclude individual from participation in, to deny them the benefits of, or to subject them to discrimination under any program o activity to which this regulation applies, the applicant or recipient has a obligation to take reasonable action to remove or overcome the consequence of the prior discriminatory practice o

usage, and to accomplish the purposes of the Act.

[30 FR 298, Jan. 9, 1965, as amended at 38 FR 17934, July 5, 1973]

§ 112.4 Discrimination in employment.

Small business concerns and development companies which apply for or receive any financial assistance of the kind described in § 112.2(a) (1) and (2), including concerns which are identifiable beneficiaries of loans made under § 112.2(a)(2), may not discriminate on the grounds of race, color, or national origin in their employment practices. Such assistance is deemed to have as a primary objective the providing of employment. Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the provisions of § 112.7(a) shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity and nondiscriminatory treatment.

[38 FR 17934, July 5, 1973]

§ 112.5 Discrimination in providing financial assistance.

Development companies and small business investment companies which apply for or receive any of the financial assistance described in § 112.2(a) may not discriminate, on the ground of race, color or national origin, in providing financial assistance to small business concerns.

§ 112.6 Discrimination in accommodations or services.

Small business concerns which apply for or receive any financial assistance of the kind described in § 112.2(a)(1), concerns which are identifiable beneficiaries of loans made under § 112.2(a)(2), and physicians, hospitals, schools, libraries, and other individuals or organizations which apply for or receive financial assistance of the kind described in § 112.2(a)(5), may not discriminate in the treatment accommodations or services they provide to their patients, students, visitors, guests, members, passengers, or patrons in the conduct of such businesses or other enterprises, whether or not operated for profit.

[31 FR 2374, Feb. 4, 1966]

§ 112.7 Illustrative applications.

(a) *Employment.* The discrimination prohibited by § 112.4 includes but is not limited to any action (taken directly or through contractual or other arrangements) which subjects an individual to discrimination on the ground of race, color or national origin in any employment practice, including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation, and use of facilities.

(b) *Financial assistance.* The discrimination prohibited by § 112.5 includes but is not limited to the failure or refusal, because of the race, color, or national origin of a person, to extend a loan or equity financing to him or to any business concern of which he is an owner or employee; or, in the case of financing which has actually been extended, the failure or refusal, because of the race, color, or national origin of the borrower or of an owner or employee of the borrower, to accord the borrower fair treatment and the customary courtesies regarding such matters as default, grace periods and the like.

(c) *Accommodations or services.* The discrimination prohibited by § 112.6 includes but is not limited to the failure or refusal, because of the race, color, or national origin of a person, to accept him on a nonsegregated basis as a patient, student, visitor, guest, member, customer, passenger or patron.

(d) *Affirmative action.* (1) In some situations even though past discriminatory practices have been abandoned, the consequences of such practices continue to impede the full availability of equal opportunity. If the efforts required of the applicant or recipient under § 112.3(b)(3) to provide information as to the availability of equal opportunity, and the rights of individuals under this regulation, have failed to overcome these consequences, it will become necessary for such applicant or recipient to take additional steps to make equal opportunity fully available to racial and nationality groups previously subjected to discrimination.

(2) Even though an applicant or recipient has never used discriminatory policies, the opportunities in the business it operates may not in fact be equally available to some racial or nationality groups. In such circumstances a recipient may properly give special consideration to race, color, or national origin to make opportunity more widely available to such groups.

[30 FR 298, Jan. 9, 1965, as amended at 38 FR 17934, July 5, 1973]

§ 112.8 Assurances required.

An application for any of the financial assistance described in § 112.2(a) shall, as a condition to its approval and the extension of such assistance, contain or be accompanied by an assurance that the recipient will comply with this part. Such an assurance shall contain provisions authorizing the acceleration of the maturity of the recipient's financial obligation to the SBA in the event of a failure to comply, and provisions which give the United States a right to seek judicial enforcement of the terms of the assurance. SBA shall specify the form of the foregoing assurance for each program, and the extent to which like assurances will be required of contractors and subcontractors, transferees, successors in interest, and other participants in the program.

§ 112.9 Compliance information.

(a) *Cooperation and assistance.* SBA shall to the fullest extent practicable seek the cooperation of applicants and recipients in obtaining compliance with this part and shall provide assistance and guidance to applicants and recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each applicant or recipient shall keep such records and submit to SBA timely, complete and accurate compliance ports at such times, and in such fo and containing such information, SBA may determine to be necessary enable SBA to ascertain whether t applicant or recipient has complied is complying with this part. In t case of a small business concern whi receives financial assistance from a velopment company or from a sm business investment company, su concern shall submit to the compa such information as may be necessa to enable the company to meet its porting requirements under this part

(c) *Access to sources of informatio* Each applicant or recipient sh permit access by SBA during norm business hours to such of its book records, accounts, and other sources information, and its facilities as m be pertinent to ascertain complian with this part. Where any informati required of an applicant or recipient in the exclusive possession of a other agency, institution or pers and this agency, institution or pers shall fail or refuse to furnish this formation, the applicant or recipie shall so certify in its report and sh set forth what efforts it has made obtain this information.

(d) *Information to the public.* Ea recipient shall make available to p sons entitled under the Act and und this part to protection against discri ination by the recipient such inform tion as SBA may find necessary to a prise them of their rights to such pr tection

[30 FR 298, Jan. 9, 1965, as amended at FR 17934, July 5, 1973]

§ 112.10 Conduct of investigations.

(a) *Periodic compliance revie* SBA shall from time to time revi the practices of recipients to det mine whether they are complying wi this part.

(b) *Complaints.* Any person who b lieves himself or any specific class individuals to be subjected to discrin nation prohibited by this part may, himself or by a representative, f with SBA a written complaint. A co plaint must be filed not later than 1 days from the date of the alleged d crimination, unless the time for filing is extended by SBA.

(c) *Investigations.* SBA will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the applicant or recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the applicant or recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, SBA will so inform the applicant or recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 112.11.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, SBA will so inform the applicant or recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No applicant or recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or by this part or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

[30 FR 298, Jan. 9, 1965, as amended at 38 FR 17934, July 5, 1973]

§ 112.11 Procedure for effecting compliance.

(a) *General.* (1) If there appears to be a failure or threatened failure to comply with this part and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by suspending, terminating, or refusing any financial assistance approved but not yet disbursed to an applicant or, in the case of a loan which has been partially disbursed, by refusing to make further disbursements. In addition, compliance may be effected by any other means authorized by law.

(2) Such other means may include but are not limited to (i) legal action by SBA to enforce its right, embodied in the assurances described in § 112.8, to accelerate the maturity of the recipient's obligation; (ii) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States, including other titles of the Act; and (iii) any applicable proceedings under State or local law.

(b) *Noncompliance with § 112.8.* If an applicant fails or refuses to furnish an assurance required under § 112.8 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. SBA shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that SBA shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part. Such proceedings shall be conducted in accordance with the provisions of Part 134 of this chapter by an Administrative Law Judge of the Office of Hearings and Appeals, who shall issue an initial decision in the case. The Administrator shall be the reviewing official for purposes of § 134.34. The applicant's failure to file a timely motion in accordance with §§ 134.19 and 134.21, requesting that the matter be scheduled for an oral hearing, shall constitute waiver of the right to an oral hearing but shall not prevent the submission of written information and argument for the record in accordance with the provisions of Part 134.

(c) *Conditions precedent.* No order suspending, terminating, or refusing financial assistance shall become effective until (1) SBA has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means; (2) there has been an express finding on the record after an opportunity for an oral hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part; (3) the initial decision has become final pursuant to § 134.32(b); and (4) the expiration of 30 days after SBA has filed with the committee of the House and the committee of the Senate having legislative jurisdiction of the form of financial assistance involved, a full written report of the circumstances and the grounds for such action.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) SBA has determined that compliance cannot be secured by voluntary means; (2) the action has been approved by the Administrator or his designee; (3) the applicant or recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and (4) the expiration of at least 10 days from the mailing of such notice to the applicant or recipient or other person. During this period of at least 10 days from the mailing of such notice to the applicant or recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the applicant or recipient or other person to comply with this part and to take such corrective action as may be appropriate.

[30 FR 298, Jan. 9, 1965, as amended at 38 FR 17934, July 5, 1973; 49 FR 33629, Aug. 24, 1984]

§ 112.12 Effect on other regulations; forms and instructions.

(a) *Effect on other regulations.* All regulations, orders or like directions heretofore issued by SBA which impose requirements designed to prohibit any discrimination against individuals on the grounds of race, color,
or national origin and which authoriz
the suspension or termination of or re
fusal to grant to or to continue finan
cial assistance to any applicant for o
recipient of such assistance for failur
to comply with such requirements, ar
hereby superseded to the extent tha
such discrimination is prohibited b
this part, except that nothing in thi
part shall be deemed to relieve an
person of any obligation assumed o
imposed under any such supersede
regulation, order, instruction, or lik
direction prior to the effective date o
this part. Nothing in this part, howev
er, shall be deemed to supersede an
of the following (including futur
amendments thereof):

(1) Executive Order 11246 and regu
lations issued thereunder, or (2) an
other orders, regulations or instruc
tions, insofar as such order, regula
tions, or instructions prohibit discrimi
nation on the grounds of race, color
or national origin in any program o
situation to which this part is inappli
cable or prohibit discrimination o
any other ground.

(b) *Forms and instructions.* SB
shall issue and promptly make avail
able to interested persons forms an
detailed instructions and procedure
for effectuating this part.

(c) *Supervision and coordinatio*
The Administrator may from time t
time assign to officials of SBA or to of
ficials of other agencies of the Govern
ment with the consent of such agen
cies, responsibilities in connection wit
the effectuation of the purpose o
Title VI of the Act and this par
(other than responsibility for final de
cision as provided in § 112.13), includ
ing the achievement of effective co
ordination and maximum uniformit
within SBA and within the Executiv
Branch of the Government in the ap
plication of Title VI and this part t
similar programs and in similar situa
tions. Any action taken, determinatio
made, or requirement imposed by a
official of another Department o
agency acting pursuant to an assign
ment of responsibility under this sub
section shall have the same effect a
though such action had been taken b
the Administrator of SBA.

[30 FR 298, Jan. 9, 1965, as amended at 38 FR 17935, July 5, 1973. Redesignated at 49 FR 33629, Aug. 24, 1984]

APPENDIX A

Name of program	Authority
Financial Programs	
Regular business loans	Small Business Act, sec. 7(a) and 7(a)(11).
Handicapped assistance loans.	Small Business Act, sec. 7(a)(10)
Small business energy loans	Small Business Act, sec. 7(a)(12).
Small general contractors	Small Business Act, sec. 7(a)(9).
Vietnam-era and Disabled Veterans Loan Program.	Pub. L. 97-72.
Debtor State development company loans (501) and their small business concerns.	Small Business Investment Act, title V, and Small Business Act, sec. 7(a)(13).
Debtor small business investment companies and their small business concerns.	Small Business Investment Act, title III.
Disaster Loans	
Physical	Small Business Act, sec. 7(b)(1).
Economic injury (EIDL)	Small Business Act, sec. 7(b)(2).
Federal action—economic injury.	Small Business Act, sec. 7(b)(3).
Currency fluctuation—economic injury.	Small Business Act, sec. 7(b)(4).
Nonfinancial Programs	
Women's business enterprise.	Executive Order 12138.
Small business innovation and research.	Small Business Act, sec. 9.
Procurement automated source system.	Small Business Act, sec. 8 and Pub. L. 96-302.
Business Development Program.	Small Business Act, sec. 8(a) and Pub. L. 95-507, as amended by Pub. L. 96-481.
Small Business Institute Program.	Small Business Act, sec. 8(b)(1) and Pub. L. 85-536.
Certificate of competency	Small Business Act, sec. 8(b)(7) and Pub. L 95-89.
Subcontracting Assistance Program.	Small Business Act, sec. 8(d) and and Pub. L. 95-507.
Technology Assistance Program.	Small Business Act, sec. 9.
Small business development centers.	Small Business Act, sec. 21 and Pub. L. 96-302.
International Trade Program	Small Business Act, sec. 22 and Pub. L. 96-481.
Service Corps of Retired Executives and Active Corps of Executives.	Small Business Act secs. 101 and 8(b)(1) and Pub. L. 95-510.
Veterans affairs programs	Pub. L. 93-237.
Private sector initiatives	Small Business Act, sec. 8(b)(1).

NOTE: All programs listed above are also covered by Part 113 of Title 13 of the Code of Federal Regulations.

[50 FR 1441, Jan. 11, 1985]

PART 113—NONDISCRIMINATION IN FINANCIAL ASSISTANCE PROGRAMS OF SBA—EFFECTUATION OF POLICIES OF FEDERAL GOVERNMENT AND SBA ADMINISTRATOR

Sec.

113.1 Purpose.

113.2 Definitions.

113.3 Discrimination prohibited.

113.3-1 Consideration of race, color, religion, sex, marital status, handicap or national origin.

113.3-2 Accommodations to religious observance and practice.

113.3-3 Structural accommodations for handicapped clients.

113.4 Assurances required.

113.5 Compliance information.

113.6 Conduct of investigations.

113.7 Procedure for effecting compliance.

113.8 Effect on other regulations, forms and instructions.

APPENDIX A

AUTHORITY: Secs. 5, 308, 72 Stat. 385, 694, as amended; 15 U.S.C. 633, 634, 687; 1691; 20 U.S.C. 1681 et seq.; 29 U.S.C. 794.

SOURCE: 44 FR 20068, Apr. 4, 1979, unless otherwise noted.

§ 113.1 Purpose.

(a) Part 112 of this chapter, issued pursuant to Title VI of the Civil Rights Act of 1964, prohibits discrimination on the basis of race, color, or national origin by some recipients of financial assistance from SBA. The purpose of this part is to reflect to the fullest extent possible the nondiscrimination policies of the Federal Government as expressed in the several statutes, Executive Orders, and messages of the President dealing with civil rights and equality of opportunity, and in the previous determination of the Administrator of the Small Business Administration that discrimination based on race, color, religion, sex, marital status, handicap or national origin shall be prohibited, to the extent that it is not prohibited by Part 112 of this chapter, to all recipients of financial assistance from SBA.

(b) In accordance with Pub. L. 94-239, 15 U.S.C. 1691, cited as the Equal Credit Act Amendments of 1976, it is unlawful for any recipient creditor to discriminate against any applicant, with respect to any aspect of a credit transaction because of race, color, religion, national origin, sex, marital status, age: (*Provided*, the applicant has the capacity to contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

(c) It is the intention of the Administrator that the prohibitions in this part supplement those in Part 112 of this chapter, that the two parts be read in pari materia, and that the procedures established herein be harmonized to the maximum extent feasible with those established in Part 112 of this chapter.

§ 113.2 Definitions.

As used in this part:

(a) The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration, or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(b) The terms "applicant" and "recipient" mean, respectively, one who applies for and one who receives any of the financial assistance under any of the statutes referred to in paragraph (a) of this section. The term "recipient" also shall be deemed to include "subrecipients"of SBA financial assistance, i.e., concerns which secondarily receive financial assistance from the primary recipients of such financial assistance. For the purposes of this part, a paragraph (b) lender (13 CFR 120.4(b)) shall be deemed a recipient of financial assistance.

(c) The term "religion" includes all aspects of religious observance and practice, as well as belief.

(d) The term "qualified handicapped person" means (1) with respect to employment, a handicapped person who with reasonable accommodation, can perform the essential functions of the job in question and (2) with respect to services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(e) The term "handicapped person," as defined by the guideline set forth by the Department of Health, Education, and Welfare in § 85.31 of Title 45 of the CFR (43 FR 2137, dated January 13, 1978), means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

(f) As used in paragraph (e) of this section, the phrase:

(1) "Physical or mental impairment" means (i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(2) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substan-

tially limits one or more major life activities.

(4) "Is regarded as having an impair-
ment" means (i) has a physical or
mental impairment that does not sub-
stantially limit major life activities but
is treated by a recipient as constitut-
ing such a limitation; (ii) has a physi-
cal or mental impairment that sub-
stantially limits major life activities
only as a result of the attitudes of
others toward such impairment; or
iii) has none of the impairments de-
ined in paragraph (f)(1) of this sec-
ion but is treated by a recipient as
aving such an impairment.

(g) The term "reasonable accommo-
lation" as used in these Regulations
nay include: (1) making facilities used
y employees readily accessible to and
sable by handicapped persons; and
2) job restructuring, part-time or
nodified work schedules, acquisition
r modification of equipment or de-
ices, the provision of readers or inter-
reters, and other similar actions.

(h) The term "facility" means all or
ny portion of buildings, structures,
quipment, roads, walks, parking lots,
r other real or personal property.

44 FR 20068, Apr. 4, 1979, as amended at 48
R 14891, Apr. 6, 1983]

113.3 Discrimination prohibited.

To the extent not covered or prohib-
ed by Part 112 of this chapter, recipi-
nts of financial assistance may not:

(a) Discriminate with regard to
oods, services, or accommodations of-
ered or provided by the aided busi-
ess or other enterprise, whether or
ot operated for profit, because of
ce, color, religion, sex, handicap, or
ational origin of a person, or fail or
fuse to accept a person on a nonseg-
gated basis as a patient, student, vis-
or, guest, customer, passenger, or
tron.

(b) With regard to employment prac-
ces within the aided business or
her enterprise, whether or not oper-
ed for profit; fail or refuse, because
race, color, religion, sex or national
igin of a person, to seek or retain
e person's services, or to provide the
rson with opportunities for advance-
ent or promotion, or accord an em-
oyee the rank and rate of compensa-
on, including fringe benefits, merited by the employee's services and abilities.

(c) With regard to employment practices within the aided business or other enterprise, whether or not operated for profit; discriminate against a qualified handicapped person; or because of handicap, fail or refuse to seek or retain the person's services or to provide the person with opportunities for advancement or promotion, or accord an employee the rank and rate of compensation, including fringe benefits, merited by the employee's services and abilities. All employment decisions shall be made in a manner which ensures that discrimination on the basis of handicap does not occur. Such decisions may not limit, segregate, or classify job applicants or employees in any way that adversely affects the opportunities or status of qualified handicapped individuals.

(d) Participate in a contractual or other relationship that has the effect of subjecting job applicants or employees to discrimination prohibited by this part. The relationships referred to in this paragraph include those with employment and referral agencies, labor unions, organizations providing or administering fringe benefits to employees of the recipient, and organizations providing training and apprenticeship programs! Activities covered by this part are as follows:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selec-

tion for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(e) Use employment tests or criteria that discriminate on the basis of race, color, religion, sex, marital status, handicap, or national origin. Employment tests which are used for all other job applicants shall be adapted in an appropriate mode for use by persons who have handicaps that impair sensory, manual, or speaking skills.

(f) Conduct a preemployment medical examination, unless required of all job applicants, and subsequent to a conditional offer of employment. The results of all such medical examinations shall be kept confidential.

(g) Make a preemployment inquiry as to whether a job applicant is a handicapped person or as to the nature or severity of a handicap: EXCEPT when a recipient is taking remedial action to overcome the effects of conditions which resulted in past discrimination, or when a recipient is taking affirmative action pursuant to section 503 of the Rehabilitation Act of 1973, as amended.

(1) Such preemployment inquiry may only be made after the job applicant has been informed that such disclosure is for the purposes set forth in paragraph (g) of this section; that the disclosure is voluntary and will be kept confidential; and that refusal of the job applicant to provide such information will not subject the applicant to any adverse action.

(2) Information elicited from qualified handicapped job applicants concerning their medical history or condition shall be kept confidential EXCEPT that (i) supervisors and managers may be informed about restrictions on or accommodations to be made for the qualified handicapped individual; (ii) first aid and safety personnel may be informed, where appropriate, of the need for possible emergency treatment; and (iii) compliance officials shall be given relevant information, if requested.

(h) Discriminate on the basis of race, color, religion, handicap or national origin in the use of toilets or any facilities for rest or comfort. Discriminate on the basis of race, color, religion, sex, handicap or national origin in the use of cafeterias, recreational programs or other programs sponsored by the applicant or recipient.

(i) With regard to all recipients offering credit, such as Small Business Investment Companies and Community Development Companies, discriminate against debtors on the basis of race, color, religion, sex, marital status, handicap, or national origin.

(j) With regard to the granting of credit by all recipient creditors, discriminate against any credit applicant with respect to any aspect of a credit transaction because of race, color, religion, national origin, sex, marital status, handicap, age (provided the applicant has the capacity to contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

§ 113.3-1 Consideration of race, color, religion, sex, marital status, handicap, or national origin.

(a) This regulation does not prohibit the consideration of race, color, religion, sex, marital status, handicap, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, religion, sex, marital status, handicap, or national origin. Where previous discriminatory practices or usage tends, on the grounds of race, color, religion, sex, marital status, handicap, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this regulation applies, the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of this regula-

ion. All programs and activities shall
e administered in the most integrated
etting possible.
(b) Nothing in this part shall prohib-
: the restriction of certain jobs to
iembers of one sex if a bona fide oc-
upational qualification can be demon-
rated by the applicant or recipient.
ustom or tradition is not a bona fide
ccupational qualification.
(c) Recipients shall take steps to
nsure that communications with job
pplicants and employees who have
sion and/or hearing disabilities are
vailable in appropriate modes.
(d) Recipients shall make reasonable
ccommodation to the known physical
r mental limitations of an otherwise
ualified handicapped job applicant or
nployee UNLESS the recipient can
emonstrate that the accommodation
ould impose an undue hardship on
ie operation of the business. Factors
be considered in determining
hether an accommodation would
npose an undue hardship on the op-
ation of a recipient's business in-
ude:
(1) The overall size of the recipient's
isiness with respect to number of
nployees, number and type of facili-
es, size of budget, and the financial
ndition of the business;
(2) The type of the recipient's oper-
ion, including the composition and
ructure of the recipient's workforce;
id
(3) The nature and cost of the ac-
mmodation needed.
(e) Such accommodation may in-
ude making facilities used by em-
oyees readily accessible to and
able by handicapped persons, job re-
ructuring, part-time or modified
rk schedules, acquisition or modifi-
tion of equipment or devices, the
ovision of readers or interpreters,
d other similar actions.
f) The final decision, when making
review or investigation of a com-
aint, as to whether an accommoda-
n would impose an undue hardship
the operation of a recipient busi-
ss will be made by the compliance
icials of the Small Business Admin-
ration.
g) Recipients shall administer pro-
ams and activities in the most inte-
ated setting appropriate to the needs of qualified handicapped persons, and shall not participate in a contractual relationship that has the effect of subjecting qualified handicapped job applicants or employees to discrimination prohibited by this part. The relationships referred to in this paragraph include those with referral agencies, labor unions, organizations providing or administering fringe benefits to employees of the recipient, and organizations providing training and apprenticeship programs.

(h) Nothing in this part shall apply to a religious corporation, association, educational institution or society with respect to the membership or the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its religious activities.

§ 113.3-2 Accommodations to religious observance and practice.

A recipient of financial assistance must accommodate to the religious observances and practices of an employee or prospective employee unless the recipient demonstrates that it is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business. As part of this obligation, recipient must make reasonable accommodations to the religious observances and practices of an employee or prospective employee who regularly observes Friday evening and Saturday, or some other day of the week, as Sabbath and/or who observes certain religious holidays during the year and who is conscientiously opposed to performing work or engaging in similar activity on such days, when such accommodations can be made without undue hardship on the conduct of the employer's business. In determining the extent of a recipient's obligations under this section, at least the following factors should be considered: (a) Business necessity, (b) financial costs and expenses, and (c) resulting personnel problems.

§ 113.3-3 Structural accommodations for handicapped clients.

(a) Recipients in preexisting structures shall make their goods or services accessible to and usable by handicapped clients. Where structural changes are necessary to make the recipient's goods or services accessible, such changes shall be made as soon as practicable, but in no event later than three years after the effective date of this Regulation. A plan setting forth the steps necessary to complete such structural changes shall be developed and submitted to SBA. If practical, interested persons, including handicapped persons or organizations representing handicapped persons, will be consulted.

(b) Alterations to existing facilities that affect usability shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped persons.

(c) All new facilities shall be designed and constructed to be readily accessible to and usable by handicapped persons in accordance with the "American National Standard Specifications for Making Building and Facilities Accessible to and Usable by the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A-117.1—1980) which is incorporated by reference, or as required in the local building code (The ANSI Standard is for sale from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018. When ordering, request ANSI A-117.1—1980. This incorporation by reference was approved by the Director of the FEDERAL REGISTER. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the FEDERAL REGISTER.)

[44 FR 20068, Apr. 4, 1979, as amended at 45 FR 81734, Dec. 12, 1980]

§ 113.4 Assurances required.

An application for financial assistance shall, as a condition to its approval and the extension of such assistance, contain or be accompanied by an assurance that the recipient will comply with this part. Such an assurance shall contain provisions authorizing the acceleration of the maturity of the recipient's financial obligations to SBA in the event of a failure to comply, and provisions which give the United States a right to seek judicial enforcement of the terms of the assurance. SBA shall specify the form of the foregoing assurance for each program, and the extent to which like assurances will be required of contractors and subcontractors, transferees, successors in interest, and other participants in the program.

§ 113.5 Compliance information.

(a) *Cooperation and assistance*: SBA shall to the fullest extent practicable seek the cooperation of applicants and recipients in obtaining compliance with this part and shall provide assistance and guidance to applicants and recipients to help them comply voluntarily with this part. Recipients are expected to continually evaluate their compliance status, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons.

(b) *Compliance reports*: Each applicant or recipient shall keep such records and submit to SBA timely, complete and accurate compliance reports at such times, and in such form and containing such information, as SBA may determine to be necessary to enable SBA to ascertain whether the applicant or recipient has complied or is complying with this part. In the case of a small business concern which receives financial assistance from a development company or from a small business investment company, such concern shall submit to the company such information as may be necessary to enable the company to meet its reporting requirements under this part.

(c) *Access to sources of information* Each applicant or recipient shall permit access by SBA during normal business hours to such of its books, records, accounts and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of an applicant or recipient is in the exclusive possession of any other agency, institution or person and such agency, institution or person shall fail or refuse to furnish this information, the applicant or recipient shall so certify in its report and shall set forth what efforts it has made to obtain this information.

(d) *Information to the Public.* Each recipient shall make available to persons entitled under this part to protection against discrimination by the recipient such information as SBA may find necessary to apprise them of their rights to such protection.

(1) In some situations even though past discriminatory practices have been abandoned, the consequences of such practices continue to impede the full availability of equal opportunity. If the efforts required of the applicant or recipient under § 113.5(b) to provide information as to the availability of equal opportunity, and the rights of individuals under this regulation, have failed to overcome these consequences, it will become necessary for such applicant or recipient to take additional steps to make equal opportunity fully available to racial, qualified handicapped, nationality groups and persons who because of their sex were previously subjected to discrimination.

(2) Even though an applicant or recipient has never used discriminatory policies, the opportunities in the business it operates may not in fact be equally available to some racial, qualified handicapped, or nationality groups. In such circumstances a recipient may properly give special consideration to race, color, religion, sex, marital status, qualified handicap or national origin to make the opportunities more widely available to such groups.

§ 113.6 Conduct of investigations.

(a) *Periodic compliance reviews.* SBA shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes that he, she or any class of individuals has been subjected to discrimination prohibited by this part may, personally or through a representative, file with SBA a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by SBA.

(c) *Investigations.* SBA will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the applicant or recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the applicant or recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, SBA will so inform the applicant or recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 113.7.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, SBA will so inform the applicant or recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No applicant or recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this part or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 113.7 Procedure for effecting compliance.

(a) *General.* (1) If there appears to be a failure or threatened failure to comply with this part and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by suspending, terminating, or refusing any financial assistance approved but not yet disbursed to an applicant. In the case of loans partially or fully disbursed, compliance with this part may be effected by calling, canceling, terminating, accelerating repayment, or suspending in whole or in part the financial assistance provided. In addition compliance may be effected by any other means authorized by law.

(2) Such other means may include but are not limited to (i) legal action by SBA to enforce its rights, embodied in the assurances described in § 113.4; (ii) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States; and (iii) any applicable proceedings under State or local law.

(b) *Noncompliance with § 113.4.* If an applicant fails or refuses to furnish an assurance required under § 113.4 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. SBA shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that SBA shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part. Such proceedings shall be conducted in accordance with the provisions of Part 134 of this chapter by an Administrative Law Judge of the Office of Hearings and Appeals, who shall issue an initial decision in the case. The Admininstrator shall be the reviewing official for purposes of § 134.34. The applicant's failure to file a timely motion in accordance with §§ 134.19 and 134.21, requesting that the matter be scheduled for an oral hearing, shall constitute waiver of the right to an oral hearing but shall not prevent the submission of written information and argument for the record in accordance with the provisions of Part 134.

(c) *Condition precedent.* Under
Part 113, no order suspending, te
nating, refusing, calling, canceling
accelerating repayment of financial
sistance in whole or in part s
become effective until (1) SBA has
vised the applicant or recipient of
failure to comply and has determi
that compliance cannot be secured
voluntary means; (2) there has b
an express finding on the record a
an opportunity for an oral hearing,
a failure by the applicant or recipi
to comply with a requirement impo
by or pursuant to this part; and
the initial decision has become fi
pursuant to § 134.32(b).

(d) Other means authorized by l
No action to effect compliance by a
other means authorized by law sh
be taken until:

(1) SBA has determined that comp
ance cannot be secured by volunta
means.

(2) The action has been approved
the Administrator or the Administ
tor's designee.

(3) The applicant or recipient
other person has been notified of
failure to comply and of the action
be taken to effect compliance.

(4) The expiration of at least 10 da
from the mailing of such notice to t
applicant or recipient or other pers
During this period of at least 10 da
additional efforts shall be made
persuade the applicant or recipient
other person to comply with this p
and to take such corrective action
may be appropriate.

[44 FR 20068, Apr. 4, 1979, as amended a
FR 33629, Aug. 24, 1984]

§ 113.8 Effect on other regulations, for and instructions.

(a) *Effect on other regulations.*
regulations, orders of like directi
heretofore issued by SBA wh
impose requirements designed to p
hibit any discrimination against in
viduals on the grounds of race, col
religion, sex, handicap, marital stat
age, or national origin and which
thorize the suspension or terminati
of a refusal to grant to or to contin
financial assistance to any applica
for or recipient of such assistance
failure to comply with such requi

ments, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction or like direction prior to the effective date of this part.

(b) *Forms and instructions.* SBA shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this part.

(c) *Supervision and coordination.* The Administrator may from time-to-time assign to officials of SBA or to officials of other agencies of the Government, with the consent of such agencies, responsibilities in connection with the effectuation of the purposes of this part (other than responsibility of first decisions as provided in § 113.9) including the achievement of effective coordination and maximum uniformity within SBA and within the executive branch of the Government in the application of this part and of comparable regulations issued by other agencies of the Government to similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the Administrator of SBA.

[44 FR 20068, Apr. 4, 1979. Redesignated at 49 FR 33629, Aug. 24, 1984]

APPENDIX A

Name of program	Authority
Financial Programs	
Regular business loans	Small Business Act, sec. 7(a).
Handicapped assistance loans.	Small Business Act, sec. 7(a)(10).
Small business energy loans	Small Business Act, sec. 7(a)(12).
Small general contractors loans.	Small Business Act, sec. 7(a)(9).
Export revolving line of credit	Small Business Act, sec. 7(a)(14).
Vietnam-era and Disabled Veterans Loan Program.	Pub. L. 97-72.
Debtor State development company loans (501) and their small business concerns.	Small Business Investment Act, Title V and Small Business Act, sec. 7(a)(13).
Debtor State and local development company loans (502) and their small business concerns.	Small Business Investment Act, Title V and Small Business Act, sec. 7(a)(13).
Debtor certified development companies (503) and their small business concerns.	Small Business Investment Act, Title V and Small Business Act, sec. 7(a)(13).
Debtor small business investment companies and their small business concerns.	Small Business Investment Act, Title III.
Pollution Control	Small Business Investment Act, Title IV, Part A.
Surety bond guarantees	Small Business Investment Act, Title IV, Part B.
Lease guarantees (not funded) disaster loans.	Small Business Investment Act, Title IV.
Physical	Small Business Act, sec. 7(b)(1).
Economic injury (EIDL)	Small Business Act, sec. 7(b)(2).
Federal action—economic injury.	Small Business Act, sec. 7(b)(3).
Currency fluctuation—economic injury.	Small Business Act, sec 7(b)(4).
Nonfinancial Programs	
Women's business enterprise	Executive Order 12138.
Small business innovation and research.	Small Business Act, sec. 9.
Procurement automated source system.	Small Business Act, sec. 8 and Pub. L. 96-302.
Business Development Program.	Small Business Act, sec. 8(a) and Pub. L. 95-507, as amended by Pub. L. 96-481.
Small Business Institute	Small Business Act, sec. 8(b)(1).
Certificate of competency	Small Business Act, sec. 8(b)(7) and Pub. L. 95-89.
Subcontracting Assistance Program.	Small Business Act, sec. 8(d) and Pub. L. 95-507.
Technology Assistance Program.	Small Business Act, sec. 9.
Small business development centers.	Small Business Act, sec. 21 and Pub. L. 96-302.
International Trade Program	Small Business Act, sec. 22 and Pub. L. 96-481.
Service Corps of Retired Executives and Active Corps of Executives.	Small Business Act, secs. 101 and 8(b)(1) and Pub. L. 95-510.
Veterans Affairs Programs	Pub. L. 93-237.
Private sector initiatives	Small Business Act, sec. 8(b)(1).

[50 FR 1442, Jan. 11, 1985]

PART 114—ADMINISTRATIVE CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT AND INDEMNIFICATION AND REPRESENTATION OF SBA EMPLOYEES

Subpart A—Administrative Tort Claims

Sec.
114.100 Definitions.
114.101 Scope of regulations.
114.102 Administrative claim; when presented; appropriate Administration Office.
114.103 Administrative claim; who may file.
114.104 Investigation.
114.105 Administrative claims; evidence and information to be submitted.
114.106 Authority to adjust, determine, compromise, and settle claims in excess of $5,000.
114.106-1 Authority of field offices to adjust, determine, compromise, and settle claims of $5,000 or less.
114.107 Limitations on authority.
114.108 Referral to Department of Justice.
114.109 Examination.
114.110 Final denial of claim.
114.111 Action on approved claim.

Subpart B—Indemnification and Representation of SBA Employees

114.112 Policy.
114.113 Attorney-client privilege.

AUTHORITY: 15 U.S.C. 634(b)(1); 15 U.S.C. 634(b)(6); 28 U.S.C. 2672; 28 CFR 14.11 (31 FR 16616).

SOURCE: 39 FR 45211, Dec. 31, 1974, unless otherwise noted.

Subpart A—Administrative Tort Claims

§ 114.100 Definitions.

As used throughout this Part 114:

(a) "Administration" means the Small Business Administration;

(b) "Regional Board of Survey" means a three-member board composed of the Regional Counsel and the Assistant Regional Director for Finance and Investment; and *the delegatee* of the Assistant Regional Director for Administration. The Regional Counsel shall be chairman.

(c) "Employee" means an officer or employee of the Administration;

(d) "District Board of Survey" means a three-member board composed of District Counsel and Assistant District Director for Finance and Investment or Chief Financial Officer and the Assistant District Director for Management Assistant or Chief Management Assistance Officer. The District Counsel shall be chairman.

(e) "Survey Officer" means the officer who reviews the findings and recommendations of the appropriate Board of Survey and approves or disapproves such findings and recommendations;

(f) "Washington Board of Survey" means a board composed of three voting members, namely: A representative of the Security and Investigations Division, Office of Audits and Investigations; a representative of the Accounting Operations Division, Office of Budget and Finance, and a representative of the Office Services Division, Office of Administrative Services Division, Office of Administrative Services; together with one non-voting member representing the Office of General Counsel.

[39 FR 45211, Dec. 31, 1974, as amended at 40 FR 6640, Feb. 13, 1975]

§ 114.101 Scope of regulations.

This part applies only to claims asserted under the Federal Tort Claims Act, as amended, 28 U.S.C. 2671-2680, accruing on or after January 18, 1967, for money damages against the United States for injury to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of an employee of the Administration while acting in the scope of his office or employment.

§ 114.102 Administrative claim; when presented; appropriate Administration office.

For purposes of this Part 114, a claim is deemed to have been presented when the Administration receives, at the district office nearest to the place where the incident occurred, an executed "Claim for Damage or Injury," Standard Form 95, in triplicate, or other written notice of an incident together with a claim for money damages in a sum certain for injury to or loss of property or injury or death alleged to have occurred as a result of the incident. When any such written notice is given, it shall be incumbent upon the district office concerned to furnish to the claimant the requisite copies of Standard Form 95 with instructions for completing it.

§ 114.103 Administrative claim; who may file.

(a) A claim for injury to or loss of property may be presented by the owner of the property, his duly authorized agent, or legal representative.

(b) A claim for personal injury may be presented by the injured person, his duly authorized agent, or legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent's estate, or by any other person legally entitled to assert such a claim in accordance with applicable state law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the parties individually as their respective interests appear, or jointly.

(e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

§ 114.104 Investigation.

The Administration may investigate, or may request any other Federal agency to investigate, a claim filed under this part.

§ 114.105 Administrative claims; evidence and information to be submitted.

(a) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at time of death, including his monthly or yearly salary or earnings (if any), and the duration of his last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support upon the decedent at the time of his death.

(4) Degree of support afforded by the decedent to each survivor dependent upon him for support at the time of his death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the damages claimed.

(b) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by his attending physician or dentist setting forth the nature and extent of the injury, nature and treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by the Administration or another Federal agency. A copy of the report of the examining physician shall be made available to the claimant upon the claimant's written request: *Provided, that* he has, upon request, furnished the report referred to in the first sentence of this subparagraph and has made or agrees to make available to the Administration any other physician's reports previously or thereafter made of the physical or

mental condition which is the subject matter of his claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment for such expenses.

(3) If the prognosis reveals the necessity for future treatment, a written statement of expected expenses for such treatment.

(4) If a claim is made for loss of time from his employment, a statement from his employer showing actual time lost from employment, whether he is a full or part-time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(6) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(c) *Property damage.* In support of a claim for damage to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price and salvage value, where repair is not economical.

(5) Any other evidence or information which may have a bearing on either the responsibility of the United States for the damage to or loss of property or the damages claimed.

§ 114.106 Authority to adjust, determine, compromise, and settle claims in excess of $5,000.

(a) Upon presentation of a claim and appropriate investigation thereof, the Board of Survey of the District or Branch office to which the claim was presented shall consider all of the evidence and enter the Board's findings of fact, conclusions, and recommendations. There shall be appended to the Board's findings of fact, conclusions, and recommendations, a legal opinio of the District or Branch Counsel r garding the liability of the Unite States under the applicable state la governing negligence and other rela ed matters. The District or Branc Board of Survey shall establish a cas file containing all documents relate to the claim and the incident out o which it arose. The file shall also contain the Board's findings of fact, conclusions, and recommendations, an the legal opinion of the counsel. Th file shall be forwarded to the Chairman of the Washington Board o Survey after the District Board o Survey has performed its function.

(b) The Washington Board o Survey shall review the case an submit its recommendations in report to the Central Office Surve Officer. A representative of the Offic of General Counsel shall review th submitted legal opinion regarding th liability of the United States under applicable state law governing negligenc and related matters and, in the even of disagreement, shall render a separate legal opinion to the Washingto Board of Survey. The report and lega opinion, if any, shall be prepared in a original and five copies and shall b attached to the case file.

(c) If the Survey Officer approve the recommendation of the Washington Board of Survey to pay the claim the Chairman of the Washingto Board of Survey shall complete a original copy of Standard Form 114 and two memorandum copies of Standard Form 1145A, "Voucher for Payment Under Federal Tort Claims Act. The Chairman shall forward sai copies to the claimant for his signature and acceptance.

(d) Upon receiving the Standar Form 1145 and 1145A from the Claimant, the Chairman of the Washingto Board of Survey shall attach th forms to the case file and forward th file to the Administrator or his designee for final approval.

(e) If the Survey Officer disapprove the recommendations of the Washington Board of Survey that the claim b paid, the case file shall be forwarde immediately to the Administrator o his designee for final action. If the Administrator or his designee concur with the Survey Officer, this shall constitute a final agency denial of the claim and appropriate notice shall be given the claimant as provided in § 114.110 of this part. If the Administrator or his designee disagrees with the Survey Officer, Standard Form 1145 and 1145A shall be prepared and forwarded to the claimant as provided for in paragraph (c) of this section. After the claimant has signed and returned them, the Administrator or his designee shall sign them.

(f) If the Washington Board of Survey recommends that the claim not be paid, the claim shall nevertheless be processed to final action by the Administrator or his designee through all the appropriate stages outlined in the preceding paragraphs of this section.

§ 114.106-1 Authority of field offices to adjust, determine, compromise, and settle claims of $5,000 or less.

(a) Upon presentation of a claim in the amount of $5,000 or less and appropriate investigation thereof, the Board of Survey of the District or Branch office to which the claim was presented shall consider all of the evidence and enter the Board's findings of fact, conclusions, and recommendations. There shall be appended to the Board's findings of fact, conclusions, and recommendations, a legal opinion of the District or Branch Counsel regarding the liability of the United States under the applicable state law governing negligence and other related matters. The legal opinion shall also frame the issues in such a way as to provide guidance to the Board of Survey in performing its functions. Such opinion shall be submitted to the Board of Survey after investigation of the claim in question but before the Board of Survey has considered the claim. The District or Branch Board of Survey shall establish a case file containing all documents related to the claim and the incident out of which it arose. The file shall also contain the Board's findings of fact, conclusions, and recommendations, and the legal opinion of the District or Branch Counsel. The file shall be forwarded to the Regional Board of Survey, after the District or Branch Board of Survey has performed its function.

(b) The Regional Board of Survey shall review the case and issue its decision thereon. This decision will then be reviewed by the Regional Survey Officer who will then make a recommendation to the Regional Director, who will make the formal decision. The Regional Director shall complete an original copy of Standard Form 1145 and two memorandum copies of Standard Form 1145A, "Voucher for Payment Under Federal Tort Claim Act." The Regional Director shall forward said copies to the claimant and his legal representative if he is so represented, for his signature and acceptance. Upon receiving the Standard Forms 1145 and 1145A from the claimant, the Regional Director shall attach the forms to the case file and direct that payment be made.

(c) If the Regional Director denies the claim, this shall constitute a final agency denial of the claim and appropriate notice shall be given claimant as provided in § 114.110.

(d) Notwithstanding the foregoing, a claim for $5,000 or less shall be processed in accordance with § 114.106 when the District Board of Survey or Regional Board of Survey have reason to believe that a related claim may be filed in connection with the same incident and the aggregate amount of such claims will probably exceed $5,000. The reason for such belief shall be included in the case file along with the findings, conclusions, and recommendations.

(e) When an administrative claim may be adjusted, determined, compromised, or settled under the Federal Tort Claims Act only after consultation with the Department of Justice as provided in § 114.107 (b) (1), (2), (3), and (c), the Regional Board of Survey shall forward the case file to the Office of General Counsel, SBA Central Office, prior to decision. The Regional Board of Survey shall be guided in this respect by the legal opinion of District Counsel. After consultation with the Department of Justice, the case file shall be forwarded by the Office of General Counsel to the Washington Board of Survey for final processing in accordance with § 114.106.

§ 114.107 Limitations on authority.

(a) An award, compromise, or settlement of a claim in excess of $25,000 filed under this part shall not be effected without prior written approval of the U.S. Attorney General or his designee. For purposes of this paragraph, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

(b) An administrative claim may be adjusted, determined, compromised, or settled under the Federal Tort Claims Act only after consultation with the Department of Justice when, in the opinion of the Chairman of the Washington Board of Survey and with the concurrence of the General Counsel:

(1) A new precedent or a new point of law is involved; or

(2) A question of policy is or may be involved; or

(3) The United States is or may be entitled to indemnity or contribution from a third party and the Administration is unable to adjust the third party claim; or

(4) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed $25,000.

(c) An administrative claim may be adjusted, determined, compromised, or settled by the Administration under the Federal Tort Claims Act only after consultation with the Department of Justice when the Administration is informed or is otherwise aware that the United States or an employee, agent, or cost-plus contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

§ 114.108 Referral to Department of Justice.

When Department of Justice approval or consultation is required under § 114.107, or the advice of the Department of Justice is otherwise to be requested, the referral or request shall be sent to the Assistant Attorney General, Civil Division, Department of Justice, in writing and shall contain (a) a short and concise statement of the facts and of the reasons for the referral or request, (b) copies of relevant portions of the Administration's claim file, and (c) a statement of the recommendations or views of the Administration. Such referral may be made any time after the presentment of a claim to the Administration, and shall be transmitted by the General Counsel or his designee.

§ 114.109 Examination.

The Administration may request any other Federal agency to conduct a physical examination of a claimant and provide a report of the physical examination. Where reimbursement for such services is authorized or required by statute or regulation, the Administration may reimburse any Federal agency which conditions its compliance with the Administration's request upon such reimbursement.

§ 114.110 Final denial of claim.

Final denial of an administrative claim shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement that, if the claimant is dissatisfied with the agency action, he may file a suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notification.

§ 114.111 Action on approved claim.

(a) Payment of a claim approved under this part is contingent upon the claimant's or his duly authorized agent's or legal representative's executing the requisite copies of Standard Form 95, Standard Form 1145, and Standard Form 1145A. When a claimant is represented by an attorney, the voucher shall designate both the claimant and his attorney as payees. The check shall be delivered to the attorney, whose address shall appear on Standard Form 1145, voucher for payment of a claim under the Federal Tort Claims Act.

(b) Acceptance by the claimant, his agent, or legal representative, of any award, compromise, or settlement made pursuant to the Federal Tort Claims Act shall be final and conclusive on the claimant, his agent or legal representative and any other person on whose behalf or for whose benefit the claim has been presented, and shall constitute a complete release of any claim against the United States and against any employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

[40 FR 52717, Nov. 12, 1975]

Subpart B—Indemnification and Representation of SBA Employees

§ 114.112 Policy.

(a) The Small Business Administration may indemnify an SBA employee, who is personally named as a defendant in any civil suit in state or federal court or an arbitration proceeding or other proceeding seeking damages against an SBA employee personally, for any verdict, judgment, or other monetary award which is rendered against such employee, provided that the conduct giving rise to the verdict, judgment, or award was taken within the scope of his or her employment and that such indemnification is in the interest of the Small Business Administration, as determined by the Administrator or his designee.

(b) The Small Business Administration may settle or compromise a personal damage claim against an SBA employee by the payment of available funds, at any time, provided the alleged conduct giving rise to the personal damage claim was taken within the employee's scope of employment and that such settlement or compromise is in the interest of the Small Business Administration, as determined by the Administrator or his designee.

(c) Absent exceptional circumstances as determined by the Administrator or his designee, the Agency will not entertain a request either to agree to indemnify or to settle a personal damage claim before entry of an adverse verdict, judgment, or award.

(d) An SBA employee may request indemnification to satisfy a verdict, judgment, or award entered against that employee. The employee shall submit a written request, with appropriate documentation including copies of the verdict, judgment, award, or settlement proposal, in a timely manner to the General Counsel, who shall make a recommended disposition of the request. Where appropriate, the Agency shall seek the views of the Department of Justice. The General Counsel shall forward the request, the accompanying documentation, and the General Counsel's recommendation to the Administrator for decision.

(e) Any payment under this section either to indemnify a Small Business Administration employee or to settle a personal damage claim shall be contingent upon the availability of appropriated funds of the Small Business Administration.

[52 FR 32534, Aug. 28, 1987]

§ 114.113 Attorney-client privilege.

Attorneys employed by the Small Business Administration who participate in any process utilized for the purpose of determining whether the Agency should request the Department of Justice to provide representation to an Agency employee sued, subpoenaed or charged in his individual capacity, or whether attorneys employed by the Small Business Administration should provide assistance in the representation of such an agency employee, undertake a full and traditional attorney-client relationship with the employee with respect to application of the attorney-client privilege. If representation is authorized, Small Business Administration attorneys who assist in the representation of an employee also undertake a full and traditional attorney-client relationship with the employee with respect to the attorney-client privilege. Any adverse information communicated by the client-employee to an attorney during the course of such attorney-client relationship shall not be disclosed to anyone, either inside or outside the Small Business Administration, other than attorneys responsible for representation of the employee, unless such disclosure is authorized by the employee. Such adverse information shall continue to be fully protected whether or not representation is provided, and even though representation may be denied or discontinued.

[52 FR 32534, Aug. 28, 1987]

PART 115—SURETY BOND GUARANTEE

Secs.

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Appendix A—Surety Bond Guarantee Agreement
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AUTHORITY: Title IV, Part B of the Small Business Investment Act of 1958 (15 U.S.C. 694a, 694b) and the Inspector General Act of 1978 (5 U.S.C. App. 1).

SOURCE: 53 FR 32202, Aug. 24, 1988, unless otherwise noted.

§ 115.1 Statutory provisions.

The relevant statutory provisions will be found at 15 U.S.C. 694a, *et seq.*

§ 115.2 Headings.

Headings are explanatory (for reference ease) and are not regulatory.

§ 115.3 Policy.

(a) *Congressional intent.* It is the intent of Congress to strengthen the competitive free enterprise system by assisting qualified small business concerns to obtain on a prudent and economically justifiable basis bid, payment, or performance bonds which are otherwise unobtainable without a Small Business Administration (SBA) guarantee. Consequently, Congress has authorized SBA to guarantee (upon such terms and conditions as SBA may prescribe) sureties participating in the Surety Bond Guarantee (SBG) program up to 90 percent of the losses incurred as a result of a principal's breach of the terms of a bid bond, payment bond, performance bond, or bonds which are ancillary to and coterminous with such bonds, on any contract not exceeding $1,250,000 in face value.

(b) *Types of bonds.* The Administration has determined that only bid, performance, and payment bonds (other than bonds in the nature of a financial guarantee) issued in connection with a contract and of a type listed in the "Contract Bonds" section of the current Rating Manual of the Surety Association of America [1] will be eligible for an SBA guarantee. In addition, the SBA guarantee may be extended to such coterminous "ancillary" bonds as are incidental to the Contract and essential for its performance. See definition of "Contract" in § 115.4.

(c) *Guarantee agreement.* A surety company participating in this program shall be listed by the U.S. Treasury as eligible to issue bonds in connection with Federal procurement contracts, or a corporation determined by SBA to be a surety eligible to participate in this program. The terms and conditions of SBA's bond guarantee agreements may vary from surety to surety, depending on SBA's experience with a particular surety. In determining the division of losses, the Office of Surety Guarantees will consider, among other things, surety's loss rate in this program in comparision to other sureties participating with SBA to a comparable degree, the rating or ranking designation assigned to the surety by recognized authority, the average dollar amount of bond penalty per bond written in this program and the ratio of bid bonds to final bonds written in this program. SBA shall not guarantee more than 80% of losses as defined herein.

(d) *Appeal of surety.* Any surety which deems itself adversely affected as a result of the guarantee agreement negotiation process outlined above to determine the division of losses may file an appeal within 30 days of the determination pursuant to paragraph (c) of this section, with SBA's Associate

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[1] 100 Wood Avenue South, Iselin, New Jersey 08830.

Administrator for Finance and Investment. That Officer will review the division of losses proposed by the Office of Surety Guarantees and will render the final Agency decision.

(e) *Timeliness.* A guarantee issued by SBA, whether pursuant to a surety bonding line (see § 115.12) or otherwise (see § 115.7(a)) will be honored only if issued (as that term is defined in § 115.4) before the executed bonds and before the work under the contract has actually begun. An SBA official having delegated authority to approve the bond in question may consent, but only by a separate writing, to the guarantee of a bond or bonds to be issued after work under the contract has actually begun, upon receipt of all of the following from the Surety:

(1) Evidence (certified copy of contract or sworn affidavit) from the principal that the surety bond requirement was contained in the original job contract, or documentation satisfactory to SBA, as to why a surety bond was not previously secured and is now being required.

(2) A certification by the principal listing all suppliers and indicating that they are paid to date, attaching a waiver of lien from each; that all taxes and labor costs are current; that all subcontractors are paid to their current position of work and a waiver of lien from each, or an explanation satisfactory to SBA why such documentation cannot be produced.

(3) A certification by obligee that all payments due under the contract to present status have been made and that the job has been satisfactorily completed to present status.

§ 115.4 Definitions.

This section includes terms defined at 15 U.S.C. 694a and provides definitions of other terms.

"Affiliate" is defined in § 121.3(a) of this Chapter.

"Amount of Contract." The amount of the contract to be bonded shall be established as of the later time of (a) issuance of the executed and guaranteed bond or bonds or (b) award of the bonded contract to the principal The contract amount shall not exceed $1,250,000 in face value. The amounts of two or more contracts for a single project, to be performed in phases, shall not be aggregated if the prior bond is released (other than for maintenance or warranty—see definition of contract in this section) before the beginning of each succeeding phase. A "single project" means one represented by two or more contracts of one principal or its affiliates with one obligee or its affiliates for performance at the same locality, irrespective of job title or nature of the work to be performed.

"Ancillary and Coterminous Bond" means a bond incidental and essential to performance of the bonded contract and coextensive in scope and duration with the related principal bond.

"Bid Bond" means a bond conditioned upon the bidder on a contract entering into the contract, if bidder receives the award thereof, and furnishing the prescribed payment bond and performance bond. A bid bond guarantee shall expire twelve months after issuance.

"Contract" means an obligation of the principal requiring the furnishing of services, supplies, labor, materials, machinery, equipment or construction (including a warranty up to two years only if such warranty is limited to defective materials or workmanship). The contract shall not be a permit, subdivision contract, lease, land contract, evidence of debt, financial guarantee, warranty of performance or efficiency, warranty of fidelity, or release of lien (other than for claims under a guaranteed bond) nor shall a contract prohibit a surety from performing a contract upon default of the principal. A warranty in excess of two years or for other than materials or workmanship shall not be covered by SBA's guaranty unless SBA, by a separate writing signed by surety and SBA, agrees to a warranty in excess of two years from completion, ancillary to an otherwise eligible contract, limited to materials and workmanship, if such warranty is the immediate contractual responsibility of the principal, upon a showing that such warranty is customarily required in the relevant trade or industry.

"Contractor" means the person with whom the obligee has contracted to perform the contract.

"Issuance" or *"issued"* means the release of the SBA-guaranteed executed bond by the surety, which binds surety to the contract if such contract is awarded to the principal.

"Loss" shall have the following meanings:

(a) Loss Under Bid Bond. In the case of a bid bond, the lesser of the penal sum or the sum which is the difference between the bonded bid and the next higher responsive bid, less any amounts recovered by reason of the principal's defenses against the obligee's demand for performance by the principal and less any sums recovered from indemnitors and other salvage. Only in jurisdictions where statute or settled decisional law requires forfeiture bid bonds for public works contracts, forfeitures on such bonds shall be deemed "Loss."

(b) Loss Under Payment Bond. In the case of a payment bond, at the surety's option, the sums necessary to pay all just and timely claims against the principal which are for the value of labor, materials or equipment furnished for use in the performance of the contract, or the penal sum of the payment bond, with interest and related court cost and attorney's fees, if any, less any amounts recovered (through offset or otherwise) by reason of the principal's claims against laborers, materialmen, subcontractors or suppliers and less any sums recovered from indemnitors and other salvage.

(c) Loss Under Performance Bond. In the case of a performance bond, at the Surety's option, the sums necessary to meet the cost of fulfilling the terms of a contract, or the penal sum of the bond, with interest and related court costs and attorneys fees, if any, less amounts recovered (through offset or otherwise) by reason of the principal's defenses or causes of action against the obligee and less any sums recovered from indemnitors and other salvage.

(d) Loss Adjustment Expense. Amounts actually paid, specifically allocable to the investigation, adjustment, negotiation, compromise, settlement of or resistance to a given claim (including court costs and reasonable attorney's fees) for loss resulting from the asserted breach of the terms of any guaranteed bond, but excluding all unallocated or overhead expenses of Surety. Any allocation method must be reasonable and in accord with generally accepted accounting principles.

(e) Loss From Litigation Cost. Expenses shall also include court costs and reasonable attorney's fees incurred in suits to enforce mitigation of loss as defined in paragraphs (a) through (c) of this definition, including suits to obtain sums due from obligees, indemnitors, principals and others, but no such expense shall be paid for any such suits filed against the United States of America or any of its agencies, officers or employees unless the surety has, prior to filing such suit, received written concurrence from SBA that such suit may be filed, or unless such claim is asserted as a cross-claim or counterclaim.

(f) Loss From Attorneys' Fees and Damages. "Loss" shall not include attorney's fees and court costs incurred by a surety in a suit by or against SBA or its Administrator, and shall not include such costs or payments (*e.g.*, tort damages) arising out of a successful suit sounding in tort initiated under the bond by a principal or any other person against such surety.

(g) Loss After Excess Contract Amount. Where the contract amount, through change orders or otherwise, within the limits permitted by § 115.15(c), is increased after Issuance of the executed guaranteed bond beyond the statutory limit of $1,250,000, SBA's share of the loss shall be limited to that percentage of the increased contract amount, which the statutory limit represents, multiplied by the guarantee percentage approved by SBA pursuant to § 115.3(c). Thus, if a contract amount has been increased to $1,375,000, SBA's share of the loss under an 80% guarantee would be limited to 72.73% [90.91% × 80%].

"Obligee" means (a) in the case of a bid bond, the person requesting bids for the performance of a contract, or (b) in the case of a payment bond or performance bond, the person who has contracted with a Principal for the completion of the contract and to

whom the primary obligation of the surety runs in the event of a breach by the principal of the conditions of a payment bond or performance bond. No person shall be named co-obligee on the bond unless such person (including a lender to the original obligee) is bound to the principal to the same extent as the original obligee or unless such co-obligee is a Federal department or agency.

"Payment Bond" means a bond conditioned upon the payment by the Principal of money to persons who furnish labor, materials and equipment for use in the performance of the contract and who have a right of action against such bond.

"Performance bond" means a bond conditioned upon the completion by the principal of a contract in accordance with its terms. Such bond shall not prohibit a surety from performing the contract upon default of the principal.

"Premium" means an amount determined by applying an approved rate to the bond or contract amount, and does not include surcharges for extra services whether or not considered part of the "premium" under local law.

"Principal" means (a) in the case of a bid bond, a person bidding for the award of a contract, or (b) in the case of final bonds, the person primarily liable to complete a contract for the obligee, or to make payments to other persons in respect of such contract, and for whose performance or payment the surety is bound under the terms of a payment or performance bond. A principal may be a prime contractor or a subcontractor.

"Surety" means the person which is listed by the U.S. Treasury, see § 115.3(c), or a corporation determined by SBA to be a Surety eligible to participate in this program, which has entered into a Surety Bond Guarantee Agreement with SBA and (a) under the terms of a bid bond, undertakes to pay a sum of money to the obligee in the event the principal breaches the conditions of the bond; (b) under the terms of a performance bond, undertakes to pay a sum of money or to incur the cost of fulfilling the terms of a Contract in the event the principal breaches the conditions of the contract; or (c) under the terms of a payment bond, undertakes to make payment to all persons supplying labor and material in the prosecution of the work under the contract and who have a right of action against the bond under local law, or (d) is an agent, independent agent, underwriter, or any other company or individual empowered to act on behalf of such person.

§ 115.5 Eligibility of principal.

In order to be eligible for a bond guaranteed by SBA, the principal must:

(a) *Size.* Qualify as a small business under Part 121 of this Chapter;

(b) *Character.* Possess good character and reputation, as determined by SBA. A Principal will be deemed to meet this standard if each owner of twenty percent or more of its equity, and each of its offices, directors, or partners possesses good character and reputation. Good character and reputation shall be presumed absent when any such person (1) has been indicted (pending disposition of such indictment) for or convicted of a felony, or has suffered an adverse final civil judgment that he or she has committed a breach of trust or the violation of a law or regulation protecting the integrity of business transactions or business relationships; or (2) a regulatory authority has revoked, cancelled or suspended the license of such person necessary to perform the contract; or (3) has obtained a bond guarantee by fraud or material misrepresentation (as these terms are defined in § 115.15), or has failed to keep Surety informed of unbonded contracts as required by a bonding line commitment pursuant to § 115.12.

(c) *Need for bond.* Certify that a bond is required in order to bid on a contract or to serve as a prime contractor or subcontractor thereon;

(d) *Availability of bond.* Certify that a bond is not obtainable on reasonable terms and conditions without SBA's bond guarantee assistance; and

(e) *Partial subcontract.* Certify the percentage of work under the contract to be subcontracted. SBA will not guarantee bonds for contractors who are primarily brokers or packagers, see § 124.109(a), Part 124 of this title.

§ 115.6 Procedure for surety bond guarantee assistance.

(a) *Application*. By submitting an application for an SBA guarantee, surety shall be deemed to certify that the bonds to be issued are appropriate to the contract requiring them, that there is a reasonable expectation that the principal, if awarded the contract, will perform the contract with respect to which the bond is required, but that, since such principal does not meet surety's normal underwriting standard, surety will not issue such bonds without SBA's guarantee. Application for an SBA guarantee (including a bonding line application) is made by the contractor and the surety on the SBA Application for Surety Bond Guarantee Assistance, SBA Forms 994 and 994B (Underwriting Review), respectively (OMB Approval No. 32450007). Except for premiums, contractor shall itemize on SBA Form 994 (Application for Surety Bond Assistance) all payments made, or to be made, by contractor to surety (as defined in § 115.4) for whatever purpose as a condition of, or in connection with, the issuance of the bond(s) to be guaranteed by SBA. Contractor and surety shall disclose, by separate attachment to SBA Forms 994 and 994B or C respectively, to the best of their knowledge any business and close family relationship between them (for definition of "close relative," see § 120.2-2(d) of this chapter). No negative statement is required. The Contractor shall be required to execute and file SBA Form 1261 (Statements Required by Law or Executive Order) (no OMB Approval No. required) with the initial application. In addition, the contractor shall complete and provide SBA Form 912, Statement of Personal History (OMB Approval No. 32450178), for each owner of 20% of its equity and each officer, director and partner, for submission with contractor's initial application and on subsequent applications will either certify that the information provided in the initial SBA Forms 912 remains complete and accurate, or will submit updated SBA Forms 912. The completed application, together with the surety's report of underwriting review on SBA Form 994B or 994C (OMB Approval No. 32450007), shall be submitted to SBA only by a person empowered and authorized by the surety in writing to issue the bond applied for. A surety shall furnish SBA a true copy of its agent's power-of-attorney (including any dollar or other limitation thereon) before or with such agent's initial request for a guarantee, notice of any subsequent modification thereof, and a renewal notice on or before the expiration date of such power.

(b) *Fees*. SBA makes no charge for reviewing an application for a bid bond guarantee. The application for a final bond shall be accompanied by the Contractor's guarantee fee (see § 115.11).

§ 115.7 Approval or decline of surety's application.

(a) *Approval*. SBA's approval or decline action will be made in writing by the SBA officer having delegated authority to take final action (see Part 101 of this Chapter). This subsection does not prohibit telephone notice by such office to a surety of SBA's execution of the guarantee in advance of surety's receipt of such approval (pending receipt by surety of written approval): *Provided, however*, That the written approval shall be controlling, as against such telephone notice.

(b) *Reconsideration—appeal*. A request by a surety for reconsideration of a decline shall be directed to the appropriate SBA officer who made the decision to be reconsidered. If the decision on reconsideration is negative, the surety may make a further appeal to the Regional Administrator. If the decision is again adverse, surety may direct an appeal to the Associate Administrator for Finance and Investment, who shall make the final Agency decision.

(c) *Notice to SBA*. When surety has issued the final bonds, surety shall complete Items 19 to 26 on SBA Forms 990 or 994C, as the case may be, and submit the form, together with the principal's guarantee fee (see § 115.11(b)) to SBA within 45 days after the later date of the award of the bonded contract or the issuance of the bond(s). If surety fails to submit such information and fee in a timely fashion, SBA's guarantee of the bond shall be void from its inception, but may be reinstated, at SBA's discretion, upon a showing that the contract is not in default and a valid reason exists why a timely submission was not made.

§ 115.8 Underwriting standards.

The surety shall adhere to SBA's general principles and practices used in evaluating the credit, capacity, and character of a contractor as set forth in SBA's Surety Bond Guarantee Program Standard Operating Procedure (SPO 50-45), as amended from time to time,[2] as supplemented by generally accepted standards of the surety business, to assure that the contract meets the requirements for feasibility of successful completion, reasonableness of cost and that the terms and conditions of the proposed bond are reasonable in light of the risks involved.

§ 115.9 SBA's review of surety's underwriting.

The SBA office referred to in § 115.7 shall review the Surety's underwriting of a bond, taking into consideration the standards specified in § 115.8 for the purpose of making SBA's determination that the principal and the proposed bond(s) are eligible for SBA's guarantee, that the principal will perform the covenants and conditions of the contract under consideration, that the cost of the contract is reasonable and that completion thereof by the small business is feasible.

§ 115.10 Reinstatement for underwriting purposes.

(a) *Conditions for reinstatement.* When legal action against the bond has been instituted, or when surety establishes a claim reserve, or when surety requests reimbursement of loss from SBA, or a principal has failed to pay SBA the fee required by § 115.11(b), the principal's file shall be transferred to SBA's Office of Surety Guarantees, unless that office, in its discretion and with the surety's recommendation, determines that further bond guarantees will assist in the prevention or elimination of loss to SBA. The application file will be retained in that office and the principal, including any affiliates, will not be considered for guarantees of bonds until principal pays the fee or surety has repaid SBA in full for all payments due to principal's default, as the case may be, or one of the following circumstances exists:

(1) Surety has settled its claim with principal for a cash payment of not less than half the amount of loss; principal paid surety amount as settled, and has given a note for the balance to surety.

(2) Principal is presented with a claim which it contests and principal provides collateral acceptable to surety which has a liquidation value of not less than the amount of the claim including related expenses.

(3) The principal's indebtedness to the surety is discharged by operation of law as in bankruptcy or any judicial or quasi-judicial process.

(b) *Underwriting after reinstatement.* A guarantee application after default is subject to the most stringent underwriting review, taking into account the previous default, past work experience, present and future financial and work capability, and SBA's budgetary guidelines. While a settlement, as described above, permits reinstatement, prudent underwriting must take into consideration all past experience. Where, however, surety with full knowledge of past experience is willing to bond the principal again, and states its belief that the principal can complete the proposed contract successfully and without another loss, SBA will give careful consideration to the surety's guarantee application.

§ 115.11 Fees and Premiums.

(a) *Surety's Premium.* A surety shall charge no amount greater than that authorized by the appropriate insurance department. A surety shall make no requirement of a principal that it purchase casualty or other insurance or any other services from the surety or any affiliate or agent of the surety. A surety shall not make non-premium charges to a principal except where other services are performed and the additional charge or fee is permitted by the appropriate State law or regulation and agreed to by the principal.

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[2] The SOP may be obtained from SBA's Office of Surety Guarantees. The current Chapter relevant here, "Underwriting Considerations," is reprinted in the Appendix to these regulations as Appendix "B".

(b) *SBA charge to principal.* No application or bid bond guarantee fee shall be charged to the small business by SBA. No bid bond guarantee fee shall be charged by SBA to the surety. If SBA guarantees a payment and/or performance bond, the principal shall pay to SBA a guarantee fee of $6 (six dollars) per thousand dollars of the contract or bond amount (calculated as in paragraph (c) of this section), to be remitted to SBA by surety together with the notice required under § 115.7(c).

(c) *SBA charge to surety.* The surety shall pay SBA the guarantee fee expressed as a dollar amount per one thousand dollars (rounded off to the nearest one thousand dollars)—of bond or contract amount, according to the surety's own premium base, as stated on the Surety Bond Guarantee Agreement (SBA Form 990) between SBA and the surety. SBA shall not receive any portion of a Surety's non-premium charges. Surety shall notify SBA of any increase or decrease in such contract or bond amount of ten thousand dollars ($10,000) or more; however, no related adjustment in the guarantee fee shall be made. But see § 115.15(c).

§ 115.12 Surety bonding line.

(a) *General.* A surety bonding line is a written commitment by SBA to a Surety which allows the issuance of multiple bonds to a specified small business within pre-approved terms, conditions and limitations. A bonding line shall not exceed one year's duration. In addition to the other limitations and provisions set forth in this part 115, the following conditions apply to each surety bonding line (OMB Approval No. 32450007).

(b) *Underwriting.* A bonding line may be issued by SBA for a small business if SBA's underwriting evaluation is satisfactory and the surety recommends the bonding line. The surety shall require the principal to keep it informed of all its contracts, bonded or unbonded, during the time limit of the bonding line.

(c) *Application for bonding line.* Upon requesting a bonding line, the surety shall provide SBA with:

(1) In addition to the forms required pursuant to § 115.6, information about the small business deemed necessary by SBA.

(2) A recommendation regarding the limit on the number of contracts with SBA guaranteed bonds under the bonding line which the small business may undertake.

(3) A recommendation regarding the maximum dollar amount of any single bonded contract the small business can reasonably be expected to perform.

(4) A recommendation concerning the limit of the total value of all outstanding bids plus uncompleted contracts ("work on hand," bonded and unbonded) which the small business can reasonably be expected to perform simultaneously.

(5) A recommendation whether the small business' bonds should be restricted to a specific type or specialty of work or should be restricted to a geographical area.

(d) *Bonding line commitment conditions.* In the event a bonding line is approved, SBA's written commitment will be conditioned to limit the following: (1) The time period of the bonding line not to exceed one year, subject to renewal in writing; (2) the total dollar amount of the small concern's bonded and unbonded work on hand during the period of the bonding line; (3) the number of such contracts during the period of the bonding line; (4) the maximum dollar amount of any single guaranteed bonded contract; and (5) any other limitation related to type, specialty of work, geographical area or credit.

(e) *Excess bonding.* If, after a bonding line is committed, the principal desires a bond and the Surety desires a guarantee exceeding a limitation of the bonding line, an application may be made under regular procedures.

(f) *Submission of forms to SBA.* Within 45 calendar days after the later date of either the award of the bonded contract or the issuance of any final bonds under a bonding line, the surety shall submit notice to SBA on forms prescribed by SBA (OMB Approval No. 32450007) showing that the bond or bonds have been issued. Surety may use SBA Form 994C (OMB Approval No. 32450007) when a completed Form 994B is on file with SBA, except when new financial statements are received from the principal. If the surety fails to submit such form and fee to SBA in a timely fashion, SBA's guarantee of the bond shall be void from its inception, but may be reinstated, at SBA's discretion, upon a showing that the contract is not in default—see § 115.3(e) (2) and (3)—and a valid reason exists why the timely submission was not made.

(g) *Fees.* With the information required under paragraph (e) of this section, surety shall remit the principal's guarantee fee [see § 115.11(b)] and any additional data deemed necessary by SBA.

(h) *Cancellation.* Upon the occurrence of a default, in the opinion of the surety, whether under a bonded or unbonded contract, the surety shall cancel the bonding line commitment. SBA or the surety may cancel a bonding line commitment at any other time upon written notice to the other party. In either event surety shall promptly notify the principal in writing. Cancellation by SBA will be effective upon receipt of such notice by the surety: *Provided, however,* That bonds issued before the effective date of cancellation shall remain guaranteed by SBA.

§ 115.13 Minimization of loss.

(a) *Indemnification agreements and collateral.* Surety shall take all reasonable action to minimize risk of loss, including, but not limited to, securing from each bonded principal a written indemnification agreement secured by such collateral as the surety and SBA may deem appropriate. Other indemnity agreements from other persons or entities, secured by collateral or unsecured, may also be required by the surety and SBA. All SBA requirements concerning collateral and indemnity from parties other than the principal shall be communicated to the Surety in the written commitments issued pursuant to §§ 115.7(a) and 115.12(d).

(b) *Salvage and recovery.* Surety shall pursue all possible sources of recovery, until SBA consents to discontinuance of such efforts: *Provided,* That in any dispute between two or more sureties which are guaranteed against loss by SBA, such dispute shall first be brought to the attention of SBA's Office of Surety Guarantees for an attempt at mediation and settlement.

§ 115.14 Claims for losses.

Claims for reimbursement on account of losses which surety has paid shall be submitted to SBA's Office of Surety Guarantees, on SBA Form 994H (OMB Approval No. 3245-0007). Loss will be determined as of the date of receipt by SBA of such claim for reimbursement, or as of such later date as additional information requested by SBA is received. Surety shall further submit semi-annual status reports on each claim, six months after the initial default notice and in six-month intervals thereafter. SBA may request additional information. Subject to part 140 of this chapter, SBA shall pay its share of loss within ninety (90) days of receipt of the requisite information. Surety shall reimburse or credit SBA (in the same proportion as SBA's share of loss) within ninety (90) days of any recovery or salvage by surety. Claims for reimbursement and any additional information provided are subject to review and audit by SBA.

§ 115.15 Defenses of SBA.

In addition to equitable and legal defenses and remedies afforded by the general law of contracts and these regulations, SBA shall be relieved of all liability under any Surety Bond Guarantee Agreement, if:

(a) *Excess Contract Amount.* The total contract amount at the time of issuance of the bond or bonds exceeds $1,250,000 in face value; or

(b) *Misrepresentation.* The surety obtained the guarantee agreement or applied for reimbursement for losses by fraud or material misrepresentation. Material misrepresentation includes (but is not limited to) both the making of an untrue statement of material fact and the omission of a statement of material fact necessary to make a statement not misleading in light of the circumstances in which it was made, and includes the adoption by the surety of a material misstatement made by others which the surety knew or under generally accepted underwriting standards should have known to be false or misleading. Failure by the surety (as defined in § 115.4) to disclose its ownership (or the ownership by any owner of twenty percent or more of its equity) of an interest in a principal or an obligee shall be deemed the omission of a statement of material fact; or

(c) *Alteration.* Surety agrees to any material alteration in the terms, conditions or provisions of the contract or bond(s), including but not limited to the following acts, without obtaining prior written approval from SBA: (1) Name as an obligee on the bond(s) any party (other than a Federal department or agency) which is not bound by the contract to the principal; or (2) make any alterations in such bond(s) or make or alter any other instrument which would increase the contract amount or bond(s) liability by more than either 25 percent, or $50,000 in the aggregate, whichever is less. See also §§ 115.3(e), 115.6(a), 115.7(c), 115.11(c) and 115.12(f) of this part.

§ 115.16 Refusal to issue further guarantees.

(a) *Improper surety bond guarantee practices.* SBA at its sole discretion may refuse to issue further guarantees to a surety where SBA finds that the surety, in its underwriting of surety bonds guaranteed by SBA, or in its efforts to minimize loss, or in its claims practices, or its documentation related to such bonds, has failed to adhere to prudent underwriting standards or other practices, as compared to those of other sureties participating in the SBA Bond Guarantee Program, including any standards or practices required and communicated by SBA. Acts of wrongdoing such as fraud or material misrepresentation (as defined in § 115.15) shall constitute adequate grounds for refusal to issue further guarantees. SBA may also require the renegotiation of the percentage of its loss guarantee with a surety which experiences excessive losses on SBA-guaranteed bonds, relative to those of other Sureties participating in the program to a comparable degree. Such refusals or sanctions will be issued by SBA's Associate Administrator for Finance and Investment. Any surety that has been so sanctioned may file a petition in accordance with § 134.11(a) of this Chapter. Proceedings concerning such petition shall be conducted in accordance with the provisions of Part 134 of this Chapter. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of § 134.34 of this Chapter.

(b) *Business integrity.* Any person qualifying as a surety, including any officer, director, individual partner, other individual holding twenty or more percent of the surety's voting securities, and any agent, independent agent, underwriter or individual empowered to act on behalf of such person shall be presumed to have good character and (subject to § 115.6(a) be entitled to present applications for guarantees of bonds, except in the following circumstances:

(1) When a State or other authority regulating insurance (including the surety industry) has revoked or cancelled the license required of such person to engage in the surety business, the right of such person to participate in the program may be denied or terminated as applicable. When such authority has suspended such license, the right to participate may be suspended for the duration of such suspension.

(2) When such person has been indicted or otherwise formally charged with a misdemeanor or felony bearing on such person's fitness to participate in the program, the participation of such person may be suspended until the charge is disposed of. Upon conviction, participation may be denied or terminated.

(3) When such person has suffered an adverse final civil judgment holding that such person has committed a breach of trust or violation of a law or

regulation protecting the integrity of business transactions or relationships, participation may be denied or terminated.

(4) When such person has made a material misrepresentation or willfully false statement within the meaning of § 115.15(b) in the presentation of oral or written information to SBA in connection with an application for a surety bond guarantee or the presentation of a claim thereon, the participation may be denied or terminated.

(c) *SBA proceedings.* Surety shall notify SBA if and when any of the above mentioned persons does not, or ceases to, qualify as a surety under this section. SBA may require submission of SBA Form 912, Statement of Personal History (OMB Approval No. 32450178) from any of these individuals. All proceedings for suspensions, terminations from and reinstatements to participation in the surety bond guarantee program shall be conducted in the manner described in paragraph (a) of this section. The Administrator may, pending a hearing and decision pursuant to Part 134 of this Chapter, suspend the participation of any surety for any of the causes listed in paragraphs (b)(1) through (4) of this section. A guarantee issued by SBA before a suspension or termination under this section shall remain in effect.

§ 115.17 Audit and investigation.

(a) *Audit.* At all reasonable times, SBA may audit in the office of either a participating surety, its attorneys, or the contractor or subcontractor completing the contract all documents, files, books, records, tapes, disks and other material relevant to the Administration's surety bond guarantee, commitments to guarantee a surety bond, or agreements to indemnify the surety. Failure of a surety to consent to such audit or maintain such records will be grounds for SBA to refuse to issue further surety bond guarantees or to honor claims until such time as the surety consents to such audit; *Provided, however,* That when SBA has so refused to issue further guarantees the surety may file a petition in accordance with § 134.11(a) of this chapter. Proceedings concerning such appeal shall be conducted in accordance with the provisions of Part 134. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of § 134.34 of this chapter.

(b) The relevant records within the meaning of paragraph (a) of this section shall be maintained for a period of three years beyond the term of each bond, plus such additional time as may be required to settle claims for which the surety may seek recovery from SBA or attempt salvage or other recovery and shall include the following records:

(1) The bond agreement;

(2) All documentation submitted by the principal in applying for the bond;

(3) All information gathered by the surety in reviewing the principal's application;

(4) All documentation of any breach by the principal;

(5) All records of any transactions for which the surety makes payment pursuant to the bond, including, but not limited to, copies of all claims, bills, judgments, settlement agreements and court or arbitration decisions, contracts and receipts;

(6) All documentation relating to efforts to mitigate losses; and

(7) Records of any accounts into which fees and funds obtained in mitigation of losses have been paid, and from which payments have been made pursuant to the bond.

(c) *Investigation.* SBA may conduct such investigations as it deems necessary to inquire into the possible violation by any person of the Small Business Investment Act of 1958, as amended, or of any rule or regulation under the Act, or of any order issued under that Act, or any Federal law relating to programs and operations of the SBA.

(d) *Authority.* Authority for paragraphs (a), (b) and (c) of this section is contained in sections 310(a) and 411(g) of the Small Business Investment Act of 1958, as amended [15 U.S.C. 687b(a) and 694b(g)], and in the Inspector General Act of 1978 (5 U.S.C., App. I).

§ 115.18 Savings clause.

The legality of transactions, including the issuance by SBA of bond guarantees, pursuant to provisions of SBA regulations in effect before amendment, shall be governed thereby, notwithstanding subsequent changes. Nothing herein shall bar SBA enforcement with respect to any transaction consummated or bond guarantees issued in violation of provisions applicable at the time, but no longer in effect. If any section or part of a section of these regulations should be adjudged invalid, only that section or part shall be invalid, and no other part or section shall be affected thereby.

APPENDIX A—SURETY BOND GUARANTEE AGREEMENT; U.S. SMALL BUSINESS ADMINISTRATION

By the signature of its authorized representative on the reverse side of this form (Blocks 16-18), the U.S. Small Business Administration guarantees the Surety named in Item 2 against loss resulting from the breach by the Principal of the terms of the bond(s) described in Blocks 11, 12, 13, 22 and 24, pursuant and subject to 15 U.S.C. 694 a and b, the regulations thereunder (13 CFR Part 115) and the conditions and representations stated below, in reliance on the declarations made on the reverse side hereof, and on the several forms submitted and signed by surety as applicable. This guarantee shall become effective upon the issuance (as defined in said regulations) of the SBA-guaranteed bond by the Surety.

1. Surety represents that it has determined the accuracy and completeness of the information in the Forms submitted by Surety which relate to this agreement, in accordance with generally accepted surety industry underwriting practices. Said Forms are incorporated herein by this reference.

2. Surety shall, conditional on the execution of this guarantee by SBA, if the Surety determines that the contract price is reasonable and the contract amount does not exceed $1,250,000, become Surety on bid, performance, payment, and other ancillary and coterminous bond(s) required for the award of the Contract. Surety may withdraw its decision to issue such bond(s) if prescribed underwriting conditions are not met or if additional information comes to the attention of Surety of a nature so as to change its underwriting determination, and notice is given to SBA.

3. The terms and conditions of such bond(s) will be in accord with those generally established and accepted by the surety industry for the type of contract for which such bond(s) are required to be furnished by
Principal, and Surety represents th
bonds would not be provided for P
on this Contract without this SBA
tee.

4. If any suit or claim is filed
Surety upon said bond(s), Suret
inform SBA of the same within 30
receipt of notice thereof in the
home office. Unless SBA decides ot
and so notifies Surety, Surety sh
charge of all suits or claims arisin
said bond(s) and compromise, s
defend such suit or claim until so
Surety shall take all steps necessary
gate any loss resulting from Princi
fault. Surety shall not join SBA in
suit to which Surety is a party unl
has denied liability or has agreed
joinder in writing.

5. No employee of SBA has auth
waive, change or alter the terms
Agreement, unless such alterations
rately attached hereto and both t
and Surety's authorized represe
have signed and dated their assent

6. This Agreement is made exclusi
the benefit of SBA and the Surety,
not confer any rights or benefits
other party, such as any right o
against SBA by any person claimin
SBA-guaranteed bonds or otherwise
event of the Surety's insolvency, S
not be liable to the receiver or othe
sentative of the Surety except for
incurred and monies actually paid
representative under the bonds gu
by SBA.

7. If any provision of this Agreem
conflict with any SBA regulation, s
ulation shall prevail in construing o
ing this Agreement.

8. Any intentionally false state
willful misrepresentation in connect
the procurement of the Guarantee
for payment pursuant to this Agre
a violation of federal law, subject
nal and civil prosecution under 1
287, 371, 1001, 15 U.S.C. 645, or 3
231, carrying fines up to $10,000 and
onment of up to five years.

APPENDIX B—UNDERWRITI
CONSIDERATIONS [FROM SOP 5

21. *Surety Underwriting*

Surety underwriting must include
lowing information for a surety bo
antee, to be updated if and when
occur:

a. *Copy of Surety Company's Quali*
Questionnaire

b. *Copies of General Indemnity Ag*
(Completed, Signed, Notarized)

c. *SBA Form 994B, "Surety Bond Guarantee Underwriting Review"*, or SBA Form 994C, "Surety Bond Guarantee Underwriting Review Update."

(1) *Uses of Forms 994B and 994C*

(a) The intent of the SBA Forms 994B and 994C is threefold: (1) To clearly place the underwriting responsibility upon the participating sureties; (2) to provide the participating sureties with a uniform format on which to present their underwriting data; and (3) to provide SBG personnel with a simplified mechanism by which they satisfy legislative and administrative requirements for performing their underwriting review functions.

(b) Surety is required to adhere to those rules, principles, and practices published from time to time by SBA's Office of Surety Guarantees. In underwriting an SBA-guaranteed bond, the surety is also expected to adhere to the surety industry's general principles and practices used in evaluating the credit, capacity, and character of a principal, taking into consideration the reason an SBA guarantee is needed.

(c) A supply of SBA Form 994B, "Surety Bond Guarantee Underwriting Review" or the SBA Form 994C, "Surety Bond Guarantee Underwriting Review Update" will be distributed to all participating surety companies as needed. Either the 994B or 994C is mandatory for all applications. The SBA Forms 994B or 994C should be completed only in the original and become an integral part of the applicant's case folder.

(2) *Failure of Surety to Complete SBA Form 994B or 994C*

Where surety has failed to fill in one or more items on Form 994B or 994C, SBA's surety bond personnel should return the entire application package to surety for completion.

On SBA Form 994B the following "red flag" signals should alert SBA's surety bond personnel:

(a) "Yes" answer in blocks: 6(c), 8(d), 20(a), 21(a), (b);

(b) "No" answer in blocks: 4, 5, 7 (b), (e) or (h), 8(i), 9 (a), (b), (c); 10 (a), (c), 11(d), 20(b), 22(a), 23, 24;

(c) No response whatever in blocks: 7 (c), (d), (f), or (g); or when the bid spread shown in item 2(c) appears to be excessive for the size of the contract.

On SBA Form 994C the following "Red Flag" signals should alert SBA's surety bond personnel:

(d) "Yes" answer in block 1(d) 6(c);

(e) "No" answer in block 5; or when the bid spread shown in item 2(c) appears to be excessive for the size of the contract.

d. *Essential Information*

The following information must be submitted on SBA Form 994B or 994C, 994F, or as an attachment:

(1) Brief description of the job, including location, obligee, and contract term. (on Forms 994B or 994C)

(2) For all work on hand, whether jobs have started or not, give the total number and dollars of contracts on hand and the total dollars to be completed. (on Form 994F)

(3) With each request, but not more often than quarterly, work on hand shall be submitted on Form 994F or comparable surety company form. More frequent submissions may be required by the field office in individual cases. (on Form 994F)

(4) The submitting surety or agent/broker is to provide the SBG staff with the specifics on any previous bond default/claim(s) involving the subject contractor, and the present status of the default.

22. *SBA Underwriting Review*

(See also "Surety Bond Guarantee Underwriting Reference Guide")

No application for surety bond guarantee assistance shall be approved unless the following conditions have been met:

a. *Eligibility*—The applicant must meet the standards of eligibility (13 CFR 115.5), and must satisfy the Administration that there is reasonable expectation that the applicant will perform the covenants and conditions of the contract with respect to which a bond is required. The Administration's evaluation will consider the applicant's experience and reputation, and its present and projected financial condition and needs.

b. *Cost and Feasibility*—SBA must be satisfied as to the reasonableness of cost and feasibility of successful completion of the contract. The SBA's determination will take into account the standards and principles of the surety industry.

c. *Indemnity*—The surety must have received the corporate and personal indemnity(s) of the applicant(s) who are either active in the concern's management or have at least *20* percent ownership thereof.

d. *Experience*—SBA must have a narrative of the contractor's work history, type of jobs previously undertaken, largest previous job, etc. SBA's approving official may request bank, obligee and/or suppliers reference letters in addition to the narrative.

e. *Other SBA Assistance*—If the contractor has received other SBA assistance, e.g., 7(a), 8(a), the file is to include the specifics on such assistance. For instance, if the contractor has received a 7(a) loan, the file should include the original amount of the loan, date authorized, copy of the authorization, disbursement date, loan balance at time of SBA Form 994B or 994C submission, status, etc.

f. *Status of Contracts*—The file is to reflect the current status of *all* contracts in process (bonded and unbonded) by the subject contractor. Likewise, the file is to show the status of all contractor's previous SBG contracts, if any, whether completed or in process, and the percentage of completion.

23. *Underwriting Cases Exceeding $500,000-Cash Flow*

Cash flow projections for both the job in question, and for the contractor itself, during the term of the job would be most helpful. These projections are not mandatory though they might be required in specific cases. The initial SBG recommending representive will make this decision.

24. *Credit Factors—Collateral*

There are no statutory requirements with respect to collateral or security for surety bond guarantees. However, refusal of a contractor to pledge collateral when available may be sufficient reason for decline. (The contractor should be as willing to demonstrate its faith in its own abilities as a contractor as it expects the surety and SBA to do.)

25. *Surety Bonding Line*

A surety bonding line is a commitment to a surety company by the SBA that allows the surety to issue bid, payment and performance bonds to a specified eligible small contractor within preapproved terms, conditions, and limitations.

a. *Eligibility*—SBA, in its discretion, may issue a surety bonding line for a particular applicant with a specified surety if SBA's prior experience with the requesting surety has been satisfactory.

b. *Applications for Surety Bonding Lines*—A request for SBA to establish a surety bonding line for a particular applicant must be made by the surety and may include all of the following as appropriate:

(1) SBA Form 912, "Statement of Personal History"; SBA Form 994, "Application For Surety Bond Guarantee Assistance"; updated SBA Form 994B, "Surety Bond Guarantee Underwriting Review"; updated General Indemnity Agreement (GIA); updated financial statements; bank letter, if bank line of credit is available.

(2) Recommended single contract
limitation.

(3) Recommended total dollar and nu
limitation of all outstanding bids
bonded and unbonded uncomp
work on hand simultaneously.

(4) Restriction to specific type of wor

(5) Restriction to specific geographic

c. *Surety Bonding Line Limitations*—
dition to any limitations of this
which are generally applicable t
Surety Bond Guarantee Program
restrictions found in 13 CFR Se
115.12 apply.

d. *Bid Bonds Issued Under Bonding L*
For each Bid Bond issued under a
ing line, the surety must submit a
994C.

e. *Final Bonds Issued Under Bo*
Lines—If the final bond is issued, s
must notify SBA, on SBA Form
within 45 calendar days after the
date of, (1) the award of the bonde
tract or, (2) the issuance of any
bonds under a bonding line, f
which SBA may void its guarantee
applicant's guarantee fee must acc
ny such notice.

26. *Bid Bonds*

SBA, having guaranteed the bid
might refuse to guarantee the require
ment and performance bonds, for exa
when the actual contract price exceed
or $50,000, whichever is greater, more
the original bid, or is more than 25% l
$50,000 less, whichever is greater, less
the next bidder, and SBA doubts th
tractor's ability to complete the proj
amount bid. In such an instance,
would either issue the payment and
formance bond without SBA's guaran
suffer default in fulfilling the bid
which could result in claims agains
surety and surety's claim against SBA.

26.5 *Underwriting Guidelines*

Underwriting Guidelines are promul
periodically, in SBA Notice format,
Regional Surety Bond Officers.
guidelines must be consulted for inf
tion, guidance and additional underw
considerations.

[53 FR 32202, Aug. 24, 1988; 53 FR
Sept. 8, 1988]

PART 116—POLICIES OF GENER APPLICATION

Subpart A—Veterans

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APPENDIX A—DECISION-MAKING PROCESS FOR E.O. 11988
APPENDIX B—SOURCES OF FLOODPLAIN INFORMATION AND TECHNICAL ASSISTANCE SERVICES FOR DETERMINING WHETHER A LOCATION IS IN A FLOODPLAIN

SOURCE: 42 FR 56720, Oct. 28, 1977, unless otherwise noted.

Subpart A—Veterans

AUTHORITY: 87 Stat. 1023.

§ 116.1 Purpose and scope.

This subpart is established by the SBA to set forth the Agency's policies and criteria for giving special consideration to veterans of the Armed Forces and their survivors or dependents in the administration of SBA programs of assistance.

§ 116.2 Definitions.

As used in this subpart:

(a) The term "veteran" means a person who served in the active military, naval or air service, and who was discharged or released therefrom under conditions other than dishonorable.

(b) The term "Armed Forces" includes the Army, Navy (with the Marine Corps), and Air Force; the Coast Guard; a unit of the National Guard when called into the service of the United States; and Environmental Science Services Administration, Public Health Service, and other organizations when assigned to and serving with armed forces.

(c) The term "survivor" means a widow or widower who has not remarried, child, or dependent parent of a deceased veteran.

(d) The term "dependent" means the spouse, child, or dependent parent of a veteran as defined further in sections 152-153 of the Internal Revenue Code.

(e) The term "child" shall include dependent children, whether a legitimate child, a legally-adopted child, a stepchild who is a member of the veteran's household, or an illegitimate child if so acknowledged in writing by the veteran or determined to be such by a court of competent jurisdiction.

§ 116.3 Special consideration.

(a) Special consideration as defined below, is available only to the veteran himself, or to one dependent or survivor. That is, it will apply first to the veteran himself or herself if not permanently disabled, and then to a dependent if the veteran does not choose to seek SBA assistance. In the case of a deceased or, totally and permanently disabled veteran, the benefit would apply to either the unremarried or supporting spouse, or child, or dependent parent. This policy does not preclude the veteran or other dependents or survivors from later applying for SBA assistance under normal procedures and criteria.

(b) Special consideration will include the following:

(1) In depth management assistance counseling on first interviews. Action will be taken to insure that our management assistance people advise veterans of SBA's programs and the potential benefits to them.

(2) Emphasize to SBA personnel designated as Veterans Affairs Officers the need for close cooperation with the local VA offices and organizations having direct interest in veterans' affairs.

(3) Direct SBA procurement personnel designated as Veterans Procure-

ment Affairs Advisers to emphasize how veterans can obtain procurement contracts from the Government.

(4) Local media campaigns to inform the veteran about SBA ability and desire to help.

(5) Special workshops and training.

(6) Prompt processing of loan applications of any type.

(7) Particular attention to giving maximum loan maturity to veterans.

(8) Loans will not be declined solely because of the lack of collateral, providing the veteran, dependent, or survivor will provide any worthwhile collateral.

(9) On all direct loans, place a liberal interpretation on present deferment policy.

(10) In the awarding of 8(a) contracts, veteran status may be a contributing factor in establishing eligibility as "socially or economically disadvantaged."

(11) In all district offices there shall be one or more loan specialists designated as veterans loan officers.

Subpart B—Flood Insurance Protection

AUTHORITY: Sec. 205(b) of Pub. L. 93-234, 87 Stat. 983.

§ 116.10 Purpose and scope.

This subpart is established by the SBA to implement the Agency's responsibilities under section 102(a) of the Flood Disaster Protection Act of 1973, which prohibits Federal financial assistance for acquisition or construction purposes in special flood hazard areas (as designated by the Federal Emergency Management Administration, formerly by the Secretary of Housing and Urban Development), when persons in such areas are eligible for flood insurance which has been made available under the National Flood Insurance Act of 1968, and have not obtained such insurance. The following programs are subject to the legislation: 7(a) Business loans, 7(b) disaster loans, Sections 501, 502 and 503 development company loans, lease guarantees, small business investment companies and pollution control guarantees.

[48 FR 39048, Aug. 29, 1983]

§ 116.11 Requirements.

(a) *General.* Flood insurance is required of a recipient of SBA direct or indirect assistance for construction purposes as defined in paragraph (d) of this section on the basis of its availability at the time of approval of a loan.

(b) *Community Participation in Insurance Program.* On and after July 1, 1975, no financial assistance will be authorized by which SBA would provide direct or indirect assistance to an applicant located in an identified special hazard area, including an area of mudslides and flood-related erosion as defined in Title 44, Code of Federal Regulations, § 59.1, unless (1) the community in which said applicant is located is participating in the flood insurance program or (2) less than a year has elapsed since the community was formally notified of the identification of a special flood hazard area within its boundaries.

(c) *Amount of coverage required.* The amount of flood insurance required is the maximum flood insurance available under the National Flood Insurance Act of 1968, as amended, but not to exceed the insurable value of the property.

(d) *Covered loan uses.* For the purpose of this subpart, construction is defined to include the acquisition, construction, reconstruction, repair or improvement of any building or mobile home on a foundation, and any machinery, equipment, inventory, fixtures or furnishings contained or to be contained therein.

(e) *Policy requirements.* For the purpose of this subpart, any flood insurance policy shall be deemed satisfactory if it meets the following requirements:

(1) Is a standard flood insurance policy; or

(2) Is a policy issued by an insurer licensed to do business in the jurisdiction where the property is located; and

(3) The flood insurance policy issued by the insurer includes an endorsement which:

(i) Requires that the insurer give 30 days written notice of cancellation or non-renewal to the insured with respect to the flood insurance coverage.

Such notice must be mailed to both the insured and the lender and must include information as to the availability of flood insurance coverage under the National Flood Insurance Program, and

(ii) Guarantees that the flood insurance coverage offered by the insurer is at least as broad as the coverage offered by the Standard Flood Insurance Policy, and

(iii) Contains a mortgage interest clause similar to that contained in the Standard Flood Insurance Policy.

(f) *Additional Assistance.* If SBA provides additional assistance to a borrower previously assisted with respect to real estate at the same facility in the same location, flood insurance will be required on the previously assisted building as well as on personal property covered by the new assistance if said borrower is located in an area in which flood insurance is available and subject to the restrictions of paragraph (b) of this section.

(g) *Non-hazard areas in nonparticipating community.* The restriction against approval of financial assistance as set forth herein applies only to property located within the designated flood hazard area and does not extend to locations outside that area even in a nonparticipating community.

[42 FR 56720, Oct. 28, 1977, as amended at 48 FR 39049, Aug. 29, 1983]

§ 116.12 Related regulations.

It is the intent of the SBA that this Subpart B be administered in a manner consistent with regulations issued by the Federal Emergency Management Agency (44 CFR Parts 59-77).

[48 FR 39049, Aug. 29, 1983]

Subpart C—Lead-Based Paint

AUTHORITY: Sec. 204(b) of Pub. L. 94-317, 90 Stat. 705.

§ 116.20 Purpose and scope.

This subpart implements the requirements of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4801 et seq., and the regulations imposed by the Department of Housing and Urban Development, 24 CFR 35.60-35.65, which has the responsibility of insuring compliance with the Act. All SBA programs of assistance except management assistance are subject to this subpart.

§ 116.21 Definitions.

(a) *Lead-based paint.* Lead-based paint means:

(1) Any paint containing more than five-tenths of 1 per centum lead by weight (calculated as lead metal) in the total non-volatile content of the paint or the equivalent measure of lead in the dried film of paint already applied or both; or

(2) With respect to paint which is manufactured after June 22, 1977, any paint containing more than six one-hundredths of 1 per centum lead by weight (calculated as lead metal) in the total nonvolatile content of the paint or the equivalent measure of lead in the dried film of paint already applied.

(b) *Residential structure.* Residential structure means any house, apartment or structure intended for human habitation, including any institutional structure where persons reside, such as an orphanage, boarding school, dormitory, day care center, or extended care facilities, college housing, hospitals, group practice facilities and community facilities.

(c) *Applicable surfaces.* Applicable surfaces means all interior surfaces, whether accessible or not, and those exterior surfaces, such as stairs, decks, porches, railings, windows and doors which are readily accessible to children under 7 years of age.

§ 116.22 Prohibition.

All recipients of SBA assistance granted in connection with the construction or rehabilitation of a residential structure are prohibited from using lead-based paint on the applicable surface of such residential structure.

§ 116.23 Penalty.

In the event lead-based paint is improperly used, the recipient will be required to remove the paint and repaint the affected area at its own expense.

Subpart D—Floodplain Management and Wetlands Protection

AUTHORITY: Small Business Act, Pub. L. 85-536 (15 U.S.C. 631); Small Business Investment Act of 1958, Pub. L. 85-699 (15 U.S.C. 661); EO 11988, 42 FR 26951 and EO 11990, 42 FR 26961.

SOURCE: 43 FR 22298, May 24, 1978, unless otherwise noted.

§ 116.30 General.

(a) *Purpose.* The purpose of this subpart is to prescribe the policies and procedures for implementing Executive Orders 11988 and 11990.

(b) *Scope.* This subpart covers policies, procedures, standards, and criteria for determining the applicability of, Executive Orders 11988 and 11990 to all the financial assistance programs authorized by the Small Business Act and the Small Business Investment Act as amended. These regulations are intended for the use of Agency personnel who have specific responsibilities under the regulations and applicants for financial assistance from SBA.

(c) *Responsibilities.* The following personnel and agencies have responsibilities under these executive orders which are described briefly here and may be discussed in more detail elsewhere in this subpart.

(1) *Administrator.* The Administrator is responsible for assuring that all Federal assistance given under his statutory authority meets the requirements of these executive orders. Such authority may be delegated to Regional and District Directors and to other agency personnel with loan approval authority as is deemed appropriate and published in the FEDERAL REGISTER.

(2) *Participation.* Eligible financial institutions who intend to request SBA participation in financial assistance to an applicant for a loan on an immediate or deferred (guaranteed) basis must have complied with the requirements of these Executive orders before submitting the application for participation to the SBA.

(3) *Direct.* Applicants for direct financial assistance from SBA shall present with their applications evidence:

(i) As to whether the location for which financial assistance is proposed is in a floodplain;

(ii) If in a floodplain, that such assistance is in compliance with local land use plans;

(iii) That any necessary construction or use permits will be issued; and

(iv) If the SBA approves such financial assistance, such assistance would be in accordance with the Executive Orders, these regulations and the "Guidelines for Implementing Executive order 11988—Floodplains Management" published by the U.S. Water Resources Council (USWRC); see 43 FR 6030, Feb. 10, 1978.

§ 116.31 Definitions.

Throughout this subpart, the following basic definitions shall apply:

(a) *Base flood.* Is that flood which has a 1 percent chance of occurring in any given year (also known as a 100-year flood). This term is used in the National Flood Insurance Program (NFIP) to indicate the minimum level of flooding to be used by a community in its floodplain management regulations.

(b) *Base floodplain.* An area subject to flooding by the base flood.

(c) *Channel.* A natural or artificial watercourse of perceptible extent, with a definite bed and banks to confine and conduct continuously or periodically flowing water.

(d) *Critical action.* Any activity for which even a slight chance of flooding would be too great.

(e) *Facility.* Any man placed item other than a structure.

(f) *Flood or flooding.* A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland and/or tidal waters, and/or the unusual and rapid accumulation or runoff of surface waters from any source.

(g) *Floodplain.* The relatively flat area or lowlands adjoining a river, stream or other waterbody (ocean, lake, wetland, or other standing water) which has been or may be covered by floodwater. Properly stated, a reference to floodplain is accompanied by a modifier indicating which level of flooding will inundate the referenced floodplain, e.g., the 0.2 percent chance (500-year) floodplain.

(h) *1 percent chance flood.* The flood having 1 chance in 100 of being exceeded in any 1-year period (a large flood). The likelihood of exceeding this magnitude increases in a time period longer than 1 year. For example, there are two chances in three of a larger flood exceeding the 1 percent chance flood in a 100-year period.

(i) *Practicable.* Capable of being done within existing constraints. The test of what is practicable depends upon the situation and includes consideration of the pertinent factors, such as the economic needs of the loan applicant who may be a disaster victim; the environment, cost, or technology.

(j) *Structures.* Walled or roofed buildings, including mobile homes and gas or liquid storage tanks that are primarily above ground (as set by the NFIP).

(k) *Wetlands.* Those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds (as defined in Executive Order 11990, Protection of Wetlands).

§ 116.32 Inapplicable actions.

(a) *General.* The Administrator has determined that certain types of actions typically do not create adverse effects or incompatible development on wetlands or in the floodplain. Therefore public review and a finding of inapplicability on a case-by-case basis in such instances is not necessary. For the following types of actions the Administration by its responsible officials to whom the authority has been delegated may determine on a case-by-case basis that the situation does not warrant application of the full 8-step decision-making process after completion of Step 1:

(1) Actions located outside the base floodplain and critical actions located outside the 500-year floodplain which do not directly or indirectly support floodplain development and which do not impact on the base floodplain.

(2) Repairs to damaged Facilities. Repairs to Facilities in which the cost of the repairs, as determined immediately before the repairs, is less than fifty percent (50 percent) of the fair market value of the Facility.

(3) Replacement of building contents, materials and equipment. The determination of applicability of these procedures to this action will be guided by the determination for the Facility in which the materials and equipment are located. For instance, liquid gas storage Facilities might require the full determination process which non-degrading inventory and materials would not.

(4) Hazard Mitigation Measures. Actions taken by an applicant to mitigate natural hazards including safe land-use and construction practices.

(5) Generally, working capital loans of any amount solely for debt payment, carrying accounts receivables, acquisition of non-water degradable inventory and equipment as determined under paragraph (a)(3) of this section.

(6) All SBA loan assistance of $500,000 or less.

[43 FR 22296, May 24, 1978, as amended at 48 FR 39049, Aug. 29, 1983]

§ 116.33 Actions covered by Executive Orders 11988 and 11990.

This section includes actions which because of the potential for harm to the Facility or to the Floodplain will generally require application of the full review and 8-step decision-making process as set forth in this subpart.

(a) Construction or acquisition of new Facilities under either Section 7(a) of the Small Business Act (15 U.S.C. 636) or section 502 of the Small Business Investment Act (15 U.S.C. 696).

(b) Repair and restoration of damaged Structures in which the cost of repairs, as determined immediately before the repairs, is equal to or greater than fifty percent (50 percent) of the market value of the structure or, in the case of a physical disaster, the pre-disaster value of the Structure.

(c) Replacement of destroyed structures.

(d) No designation of a Neighborhood Business Revitalization Area will be made within a 1 percent Floodplain.

§ 116.34 Policies.

(a) SBA will ascertain the accuracy and completeness of the material relating to compliance with the Executive orders and determine whether (1) there are feasible alternatives to the provision of financial assistance to businesses located in Structures within the Floodplain; (2) whether Structures built in or repaired and restored as in paragraphs 116.33 (b) and (c) herein, are to be repaired and restored in full compliance with the Flood Insurance Protection Act; (3) SBA will also discuss with any applicant for assistance or participating institution the economic consequences of remaining in or locating in a Floodplain area.

(b) SBA will continue to require Flood Insurance as set forth in Subpart B hereof and take appropriate action to assure that applicants are aware of their continuing responsibility to maintain such insurance and that no future Federal disaster assistance will be available if such insurance is not maintained.

(c) SBA will identify flood hazards and evaluate the potential effects of any non-exempt actions it may be requested to finance in Wetlands or in a Floodplain to achieve the goals and objectives set forth by the two Executive orders.

(d) SBA will comply fully with the requirements of the two executive orders to give early public notice and full publicity to appropriate steps in the decision-making process set forth in this subpart.

(e) SBA will assure that its program implementation and budget requests reflect consideration of flood hazards, protection of the Wetlands, and Floodplain management in accordance with applicable standards and the WRC guidelines.

(f) SBA will coordinate its implementation of these two executive orders under this subpart with the implementation of NEPA to achieve the requirements of all these programs in the decisionmaking process with minimum duplication or conflict.

§ 116.35 Decision-making process.

(a) *General.* Individuals responsible to the Administrator for executing this decision-making process must be thoroughly familiar with the two Executive Orders, the USWRC Guidelines, and with this subpart. Questions requiring clarification of any aspect of this Subpart should be referred to the Associate Administrator for Finance and Investment for his review and determination. Any delegate is reponsible to the Administrator for appropriate execution of this decision-making process in each case, involving any non-exempt action funded by an SBA loan in the Wetlands or in a Floodplain (See Appendix A for flow chart of this 8-step process).

(b) *Step 1—Determine if a proposed action is in the Base Floodplain.* The first step in complying with the Order is to determine whether or not a proposed action is located in the Base Floodplain.

(1) *Step 1.A. Types of Floodplain*—(i) *Riverine Floodplains.* Riverine Floodplains are valley areas adjacent to any size stream or river which can be covered by floodwaters. Flooding in these areas results from excessive rainfall, snowmelt, or a combination thereof. If runoff is increased to the point that the carrying capacity of the channel is exceeded, Flooding occurs. Flooding also occurs when the capacity of the stream channel is reduced by natural obstructions (ice or debris, dams, sediment, and vegetation) and man-placed obstruction (Structures and Facilities). Some areas Flood either from tributary stream overflow, backwater from a major stream, or from both simultaneously.

(ii) *Coastal Floodplains.* Coastal Floodplains border lakes, estuaries, oceans, or similar bodies of standing water. Flooding in these areas is due to landward flows caused by unusually high tides, waves from high winds, storm surges, tsunamis (large waves in the sea associated with very strong earthquakes or other impulsive disturbances), or by a combination of these causes.

(iii) *Special Floodplain Areas.* Special Floodplain areas encompass sheet flow or shallow Flooding areas, Wetlands, and sinkholes. Sheet flow occurs where a clearly defined channel is absent and where the path of Flooding is unpredictable and indeterminate. In some cases, high velocity flow may occur with sheet flow, as it does commonly on debris cone Floodplains (alluvial fans). These cones build up from eroded geological debris that is carried by mountain streams and deposited when the stream encounters an abrupt decrease in slope. Other Flood problems are caused when development occurs in areas drained by sinkholes which often become plugged.

(2) *Step 1.B. Limits of Flooding.* For purposes of the Order, SBA will be concerned at a minimum with the Floodplain area which would be inundated by a Flood having a one percent chance of occurring in any year—the so called "100 year or Base Flood" because the Administrator or his delegate must support any decision to conduct, support, or allow an action (i.e., "Structure", "Facility" or "activity") to be financially assisted within this area. In addition, such delegation should consider the implications of the occurrence of a Flood larger than the Base Flood on the economics and safety of a proposed Floodplain action. If a proposed action would be especially dangerous when exposed to larger Floods, consideration must be given to the larger Floodplain area. (See (b)(4) "Critical Actions.")

(3) *Procedures for Determining a Floodplain Location.* The following is a guide for obtaining the Floodplain information needed to make a determination.

(i) *Areas of Predominantly Private Land Ownership.* If a decision involves a publicly or privately owned site within an area of predominantly private ownership, a map showing the Flood hazard areas will usually be available in the community or SBA Office or can be obtained from the Federal Insurance Administration (FIA), HUD. Detailed maps showing the elevations and boundaries of the "100-year" (Zones A and V) and "500-year" (Zone B) Floodplains are known as "Flood Insurance Rate Maps" (FIRM). Many of the communities which have a FIRM also have a Flood Insurance Study Report (FIS) containing detailed Flood information. Some 13,000 less detailed maps showing the approximate areas of the base (Zone A) Floodplain are available for most of the remaining communities. These are called "Flood Hazard Boundary Maps" (FHBM). Similar information, some very detailed, is also available from the agencies in Appendix B. The search for Flood hazard information should follow the sequence below. The detailed map (FIRM) or the Flood Insurance Study (FIS) report should be consulted first. If a detailed map (FIRM) is not available, obtain an approximate boundary map (FHBM) from the same source as in the preceding step. If the proposed site is at or near the "100-year" boundary, if data on Flood elevations are needed, or if the map does not delineate the Flood hazard boundaries in the vicinity of the proposed site—seek detailed information and assistance from the agencies listed in Appendix B. If an approximate boundary map (FHBM) is not available or if the map does not delineate the Flood hazard boundaries in the vicinity of the proposed site—seek detailed information and assistance from the agencies listed in Appendix B. If the agencies listed do not have or know of detailed information and are unable to assist in determining whether or not the proposed site is in the Base Floodplain—report this fact to the nearest SBA office director and obtain guidance.

(ii) *Areas of Predominantly State Land Holdings.* If a decision involves an area or location within extensive State holdings, it is unlikely that FIS reports and FIRM or FHBM maps would be available. In this event, information should be sought from the State land administering agency before information and/or assistance is sought from the agencies listed in Appendix B.

(iii) Actions located out of the Base Floodplains as shown on either the FIRM or FHBM would meet the minimum requirements and no further action is required for compliance with the Order, unless the action impacts on the Base Floodplain, indirectly supports Floodplain development, or is a Critical Action.

(4) *Step 1.C.* As indicated previously, the minimum Floodplain of concern for certain Critical Actions is the area subject to inundation from a Flood having a 0.2 percent chance of occurring in any given year (500-Floodplain). This Floodplain includes both Zones A and B as shown on FIRM's. Some key questions in identifying critical actions are:

(i) If flooded, would the proposed action create an added dimension to the disaster as could be the case for liquified natural gas terminals and Facilities producing and storing highly volatile, toxic, or water-reactive materials?

(ii) Given the Flood warning lead-time available, would the occupants of buildings such as hospitals, schools, and nursing homes be insufficiently mobile to avoid loss of life and injury?

(iii) Would essential and irreplaceable records, utilities, and/or emergency services be lost or become inoperative if flooded?

(c) *Step 2—Early Public Review*—(1) *General.* The objective of public involvement is to provide sufficient information early enough in the process of making decisions affecting Floodplains so that the public can have impact on the decision outcome. The order includes requirements that the public be provided adequate information, opportunity for review and comment, and an accounting for the rationale for proposed actions affecting Floodplains. Approval by such groups will not affect the financial determination to be made by SBA.

(2) *Procedures.* Compliance with the requirements of § 116.30 (c)(2) and (3) requires that applicants will have notified local and State officials of the proposed request for financial assistance, and any requirements for public hearings will have been initiated by such requests for building permits, licenses, etc. However, SBA deciding officials will determine on a case-by-case basis if there is a need for further publicity and public hearing and arrange for such additional dissemination of information, hearings, or written comments as are appropriate and necessary to comply with the intent and spirit of these Executive orders and implementing regulations. Such determination must recognize SBA's responsibility to reach as broad an audience as possible and provide for public input before alternative actions have been precluded. If there is a reasonable likelihood that a plan or proposed action or its alternatives will impact on a Floodplain, then it should be announced as early as that is known, and not delayed until much more detailed information is developed. Public notice must precede major site identification and analysis so the public can have an input early in the decision-making process of preliminary site screening and selection. If not, public choice options may be foreclosed, or decisions will not be based on similarly detailed information bases. It is recognized, because of the type of financial assistance available from SBA and the limited effect of such assistance which is authorized only to individual businesses or homeowners in disaster areas, that public involvement will be minimal. It is the intention of this provision for public involvement to emphasize SBA's commitment to and desire to comply with the spirit and letter of the Executive orders. It should also be noted that no SBA actions are subject to OMB Circular A 95 procedures which is a recognition of the minor impact of SBA actions.

(d) *Step 3—Identify and Evaluate Practicable Alternatives to Locating in the Base Floodplain.* Having determined that a proposed action is located in the Base Floodplain, the designated official is required to identify and evaluate practicable alternatives to locating in the Base Floodplain. Alternatives to be evaluated include: carrying out the proposed action at a location outside the Base Floodplain (alternative sites); other means which accomplish the same purpose as the proposed action (alternative actions) and no action.

(1) *Step 3.A. Alternative Sites.* Alternative sites must be identified and the practicability of such sites evaluated. If a practical site exists outside the Base Floodplain, the proposed action must not be located in the Base Flood-

plain. Whenever a Floodplain site is the only practical alternative, the SBA analysis leading to this conclusion, should be fully documented. In determining the practicability of a non-Floodplain site, the general concepts of site feasibility apply. At a minimum site practicability shall be addressed in the light of the following:

(i) Natural (topography, habitat, hazards, etc.);

(ii) Social (aesthetics, historic and cultural values, land use patterns, etc.);

(iii) Economic (cost of space, construction, services, relocation, and the needs of the applicant, who may be a disaster victim); and legal (deeds, leases, etc.).

(2) *Step 3.B. Alternative Actions.* Alternative actions must be considered before a decision is made to carry out an action in the Base Floodplain. These are actions which substitute for the proposed action in that they comprise new solutions or approaches which serve the same function or purpose as that proposed, but which have less potential for harm.

(3) *Step 3.C. No Action.* No action is also an alternative, and assessment of this course is required. The alternative of no action probably cannot be fully evaluated until a determination has been made in Step 4 of the harm to or within the Floodplain resulting from the proposed action.

(e) *Step 4—Identify Impacts of the Proposed Action.* If the designated official has determined that the only practicable alternative is locating in the Base Floodplain, the impacts of the proposed action must be identified. Similarly, where actions proposed to be located out of the Floodplain will affect the Base Floodplain, impacts resulting from these actions must be identified. Since the Order is based primarily on NEPA, SBA can draw upon the impact identification and assessment experience and guidance which it has developed in its implementation of NEPA. The concepts of impact assessment applicable to both NEPA and the Order are identical, with the Order's focus being narrower. The following discussion addresses general concepts of impact identification and assessment (Step 4.A), and the two areas of concern which are impacted as a result of the occupancy and modification of Floodplains; lives and property (Step 4.B), and Floodplain values (Step 4.C).

(1) *Step 4.A. General Concepts.* In his review of a proposed action that is not exempt, the designated official shall specifically consider and document:

(i) Impacts associated with modification of Wetlands or Floodplains regardless of its location;

(ii) Additional impacts which may occur when certain types of actions may support subsequent actions which have additional impacts of their own;

(iii) Adverse impacts of the proposed action on lives and property and on natural and beneficial Floodplain or Wetland values;

(iv) The three basic types of impacts discussed in the following paragraphs.

(2) *Step 4.A.1. Direct and Indirect Support of Floodplain or Wetland Development.* An action supports Floodplain development if it encourages, allows, serves, or otherwise facilitates additional Floodplain development. The designated official may consider whether or not proposed repair or restorative work has the effect of maintaining the status that existed prior to a major disaster in evaluating its impacts. Direct support results from actions located in Wetlands or on the Floodplain, while indirect support results from those outside. All such impacts shall be evaluated.

(3) *Step 4.A.2. Types of Impacts.* The three basic types of impacts which must be addressed are:

(i) Positive and negative impacts: both must be identified, even though the focus of impact identification and assessment is on negative or adverse impacts. This is necessary in order to identify the full range of impacts against which to weigh the practicability of a proposed action. In addition, it must be recognized that impacts which are beneficial to some, may be harmful to others.

(ii) Concentrated and dispersed impacts: Both may result from any action. The impact is concentrated if it occurs at or near the site of the action and is dispersed if it occurs at a site remote from the action.

(iii) *Short- and long-term impacts.* Both must be analyzed in order to evaluate the total impact of an action. Short-term impacts are temporary changes occurring during or immediately following an action and usually persist for a short while. Long-term impacts occur during or after an action and may take the form of delayed changes or changes resulting from the cumulative effects of many individual actions. Long-term impacts may persist for a considerable time and may continue indefinitely.

(4) *Step 4.A.3. Sources of Impacts.* Regardless of the source of impacts, the designated official is required to identify the types of impacts discussed above which arise from proposed actions when these impacts affect the Floodplain. Thus, this requirement applies to actions proposed both in and out of the Base Floodplain (or the 500-year Floodplain where a Critical Action is proposed). The location of the action causing the impact determines which of the requirements of the Order must be met. For actions proposed in the Base Floodplain (or the 500-year Floodplain where a Critical Action is proposed), all of the requirements of the Order must be met. For actions, proposed out of the Base Floodplain, however, the Order does not require that the public notice and findings discussed in Steps 2 and 7 be prepared. Similarly, since in these cases the action causing the impacts in the Base Floodplain is located outside of it, the practicability test (Step 3) is not required. As a minimum, however, the designated official must identify these impacts and minimize ensuing harm to or within the Floodplain which would result if the action is taken as proposed. Because there is no requirement for public notice or the practicability test, the minimization responsibility (Step 5) takes on added significance. The designated official shall apply the public notice procedures and alternate site and action evaluation to actions proposed out of the Floodplain which will result in impacts to Floodplain.

(5) *Step 4.B. Lives and Property.* After determining that a proposed action is in the Base Floodplain, the risk to lives and property involved in using that site must be determined. This requires an understanding of the magnitude and consequences of Flooding that can be expected.

(6) *Step 4.B.1. Nature of Hazard and Risk.* Two basic types of Floods are used in determining flood hazards:

(i) *Historic Floods.* Often these can be the basis for deciding whether a proposed site is in a hazardous area. However, the fact that a certain level of Flooding has been observed indicates little about how Floods are likely to occur in the future. Even where records extend over a long period of time, the highest observed Flood must not be used as the only guide for decision-making. With very few exceptions, Flooding at any site can be expected to reach higher levels than those previously recorded because larger storms, urbanization, Floodplain encroachment, or other factors affect Flooding.

(ii) *Probability Flood.* These are statistically derived Floods. The one percent chance (100-year or Base) Flood is the term which describes the magnitude of Flooding, used by FIA as the minimum acceptable level to which a community must regulate the Floodplain in order to qualify for the National Flood Insurance Program.

(7) *Step 4.B.2. High Hazard Areas.* High hazard areas are those portions of riverine and coastal Floodplains nearest the source of Flooding. These are the frequently flooded areas that become areas of major flood dynamics during large Floods. Here Flood waters exert their maximum pressures, erosion is greatly accelerated and loss potential is increased. Additionally, these are the areas of coastal and riverine Floodplains within which many of the most critical Floodplain values are concentrated. In riverine situations, the high hazard area is that portion of the Floodplain where impedance to flood flow resulting from man's occupancy can increase Flood heights and consequently the area subject to Flooding. In coastal Flood-plains the high hazard area i usually confined to the beach area i front of high bluffs or the crest of pri mary or foredunes, where wave impac is the most significant inducing factor In light of the high loss potential an

the likelihood of significant adverse effects to Floodplain values associated with the conduct, support or allowance of actions in these portions, the designated official must rigorously apply the Order's charge to avoid these areas.

(8) *Step 4.B.3. Evaluation of Flood Hazard.* In preparing the Damage Survey Report for a proposed action in the Wetlands or in the Floodplain, the designated official shall make a determination in the field whether the 8-step decision making process may be involved and shall record his determination on the Damage Survey Report. If his determination is affirmative, he shall clearly identify and describe the hazard involved and shall answer the following questions:

(i) Is the proposed action to be located in the floodway portion of the riverine Floodplain, or the coastal high hazard area?

(ii) Is the proposed action in a flood-fringe area such as the flood-fringe portion of a riverine Floodplain or the backwater areas of a coastal Floodplain?

(iii) Is the flood hazard aggravated by the presence of, or potential for, destructive velocity flows, Flood-related erosion, subsidence or sinkholes, or other special problems?

(iv) Is there a combination of Flood sources present which may Flood simultaneously in the area (e.g., river and ocean)?

(9) *Step 4.C. Natural and Beneficial Floodplain Values.* Water and the adjacent Floodplain exist in nature in a state of dynamic equilibrium. If one part of a coastal or riverine system is disturbed, the entire system usually readjusts toward a new equilibrium. Thus, Floodplain actions must be viewed with caution and a careful assessment made of their impact on natural and beneficial Floodplain values. Floodplains in their natural or relatively undisturbed state serve water resource values (natural moderation of Floods, water quality maintenance, and groundwater recharge), living resource values (fish, wildlife, and plant resources), cultural resources values (open space, natural beauty, scientific study, outdoor education, and recreation), and cultivated resource values (agriculture, aquaculture, and forestry).

(f) *Step 5—Minimize, Restore, Preserve*—(1) *General.* The requirements of the Order to minimize, restore, and preserve, apply if a proposed action will result in harm to or within the Floodplain. The term "harm," as used in the context of the Order, applies to both lives and property (Step 4.B.), and natural and beneficial Floodplain values (Step 4.C.). The concept of minimization (Step 5.A.), applies to harm. The concept of restoration and preservation (Step 5.A.) applies only to Floodplain values. Step 5.C. discuss some mechanisms which may be applied to achieve these three requirements.

(2) *Step 5.A. Minimize.* Minimize is a demanding standard and requires that harm be reduced to the smallest possible degree. From the standpoint of lives and property, potential harm to or within the Floodplain must be reduced to the smallest possible amount or degree. The goal is to avoid increasing the Flood loss potential associated with the level of the Base Flood prior to the proposed action. Where a Critical Action is proposed (see Step 2.C.) the goal is associated with higher levels of Flooding. The Order's requirement to minimize potential harm applies to (i) the investment at risk, or the Flood loss potential of the action itself, (ii) the impact the action may have on others, and (iii) the impact the action may have on Floodplain values. In his review and findings the designated official shall specify how actions will be designed and modified to minimize harm to or within the Floodplain.

(3) *Step 5.B. Restore and Preserve.* In the context of this Order, "restore" focuses upon conditions existing as a result of prior actions, while "preserve" focuses upon the impacts of a proposed action. Restore means to reestablish a setting or environment in which the natural and beneficial Floodplain values can again operate. Where Floodplain values have been degraded by past actions, the designated official must identify, evaluate, and implement measures to restore the values diminished or lost. Preserve means to prevent modification to the

natural Floodplain environment, or to maintain it as closely as possible to its natural state. If an action will result in harm to or within the Floodplain, the designated official must design or modify the action to assure that it will be carried out in a manner which preserves as much of the natural and beneficial Floodplain values as is possible.

(4) *Step 5.C. Methods of Minimize, Restore and Preserve.* A wide range of methods have been developed over time to minimize harm to lives and property from Flood hazards. In the recent past, other methods directed toward minimizing harm to natural and beneficial environmental values, including those associated with the Floodplain, have also been developed. The technology and methodologies for achieving restoration and preservation are not as well documented nor understood, but currently are receiving increasing attention. The tools and approaches, which are directed toward attaining these three goals of the Order, should be considered and applied at all stages of a proposed action, as appropriate, e.g., during the planning, design, construction, operation and maintenance of a proposed project.

(g) *Step 6—Reevaluate Alternatives*—(1) *General.* Having identified the impacts the proposed action would have on the Floodplain (Step 4), methods to minimize these impacts, and opportunities to restore and preserve Floodplain values (Step 5); the proposed action should now be reevaluated. For proposed actions in the Base Floodplain, the reevaluation should consider if the action is still feasible at this site. If not, consider limiting the action to make non-Floodplain sites practicable. If neither is acceptable, the alternative is no action. If the proposed action is outside the Base Floodplain but has impacts which cannot be minimized (Step 5), consider whether the action can be modified or relocated to eliminate or reduce the identified impacts, or if the no action alternative should be chosen. The reevaluation should also include a provision for comparison of the relative adverse impacts associated with the proposed action located in and out of the Floodplain. The comparison should emphasize Floodplain values. However, a site out of the Floodplain should not be chosen if the overall harm is significantly greater than that associated with the Floodplain site.

(2) *Step 6.A. Location in the Base Floodplain.* In determining whether the proposed action will be located in the Base Floodplain, the designated official must ascertain that the Floodplain site is the only practicable alternative. Further, the importance of the location must clearly outweigh the requirements of the Order to:

(i) Avoid direct or indirect support of floodplain development wherever there is a practicable alternative;

(ii) Reduce the risk of flood loss;

(iii) Minimize the impact of floods on human safety, health and welfare; and

(iv) Restore and preserve the natural and beneficial Floodplain values.

(3) *Step 6.B. Limit Action.* If an action proposed to be located in the Floodplain cannot satisfy the four requirements in Step 6.A., consider reducing the criteria for the proposed action. This would lower the threshold for what constitutes a practicable alternative. New alternative actions and sites could then be identified and previously rejected ones reevaluated for practicability based on scaled-down expectations.

(4) *Step 6.C. No Action.* If neither of the above courses of action are feasible, reevaluate the no action alternative.

(h) *Step 7—Findings and Public Explanation*—(1) *General.* If reevaluation results in the determination that there is no practicable alternative to locating in or impacting the Floodplain, a statement of findings and public explanation must be provided for the proposed action. The SBA Public Statement of Findings and Explanation should explain how any tradeoff analysis was conducted by the agency in making its findings. Some existing Regional public notice procedures may already satisfy part of th requirements of the Order. However procedures must incorporate the d velopment and issuance of a writte statement of findings and public e planation which includes:

(i) A description of why the proposed action must be located in the Floodplain;

(ii) A description of all significant facts considered in making the determination including alternative sites and actions;

(iii) A statement indicating whether the actions conform to applicable State or local Floodplain protection standards;

(2) In addition, and in keeping with the concept of the overall public involvement process discussed in Step 2, the following items should be included in the statement of findings and public explanation:

(i) A statement, if appropriate, indicating why the NFIP criteria are demonstrably inappropriate for the proposed action (for instance, marinas, piers, docks, etc. must be at the water level);

(ii) A provision for publication in the FEDERAL REGISTER or other appropriate vehicle;

(iii) A provision for a brief comment period prior to agency action (15 to 30 days);

(iv) A description of how the activity will be designed or modified to minimize harm to or within the Floodplain.

(v) A statement indicating how the action affects natural or beneficial Floodplain values;

(vi) A statement listing other involved agencies and individuals.

(3) *Step 7.A.* The Administrator must develop procedures to provide for similar notice and explanation of why a proposed action is to be located in a Floodplain.

(4) *Step 7.B. Actions Subject to NEPA.* For actions subject to NEPA which take place in the Base Floodplain, the public review requirements discussed above should include the nine items listed in the introduction to this step. Section 2(a)(4) of the Order requires the same public notice procedures for Federal actions in the Floodplain even though impacts are not significant enough to require the preparation of any environmental impact statement (EIS) under section 102(2)(C) of NEPA (Pub. L. 91-190). Under NEPA procedures, a final EIS is circulated for public and interagency review and comment. A minimum of 30 days is required to allow a review and to receive responses from the public and governmental agencies. These comments must then be considered. The findings must be made in conjunction with a final SBA decision, and the formal statement of findings required by the Order must be issued prior to initiating the proposed action. A final EIS should explain, if appropriate, why the responsible official has recommended or why SBA might support an action located in a Floodplain.

(5) *Step 7.C.* All Actions Located in the Base Floodplain. A statement of findings (including the explanatory information discussed in 7.A.) must be issued by the Administrator in compliance with section 2(a)(2) of the Order. This applies to all proposed actions located within or impacting on the Floodplain, including proposed actions whose impacts are not significant enough or are not otherwise required to complete and EIS.

(i) *Step 8—Implement Action.* With the consulsion of the decisionmaking process described in Steps 1-7, the proposed action can be implemented. However, there is a continuing responsibility for insuring that the action is carried out in compliance with the Order.

Subpart E—Coastal Barrier Resources Act

AUTHORITY: 16 U.S.C. 3501 et seq. and (15 U.S.C. 634(b)(6)).

SOURCE: 50 FR 14211, Apr. 11, 1985, unless otherwise noted.

§ 116.40 Purpose and scope.

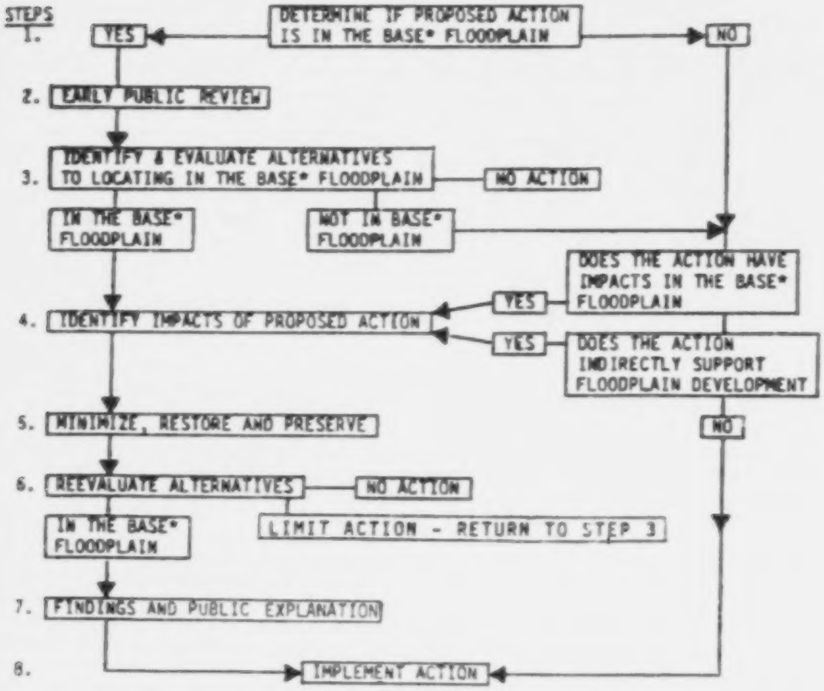
This subpart describes the application of the Coastal Barrier Resources Act of 1982 (Act), the SBA financial assistance programs. The Act prohibits direct or indirect Federal financial assistance under authority of any Federal law within the Coastal Barrier Resources System, including, but not limited to the construction or purchase of any structure, appurtenance, facility or related infrastructure as well as the construction or purchase of any road, airport, boat landing facility, or other facility on, or bridge or causeway to, or erosion prevention of, any system unit. The following programs are subject to the legislation: all financial assistance under subsections 7 (a) and (b) of the Small Business Act, and Titles III, IV, and V of the Small Business Investment Act, as amended, including lease, surety bond and pollution control guarantees, small business investment companies, and development companies.

§ 116.41 Definition of Coastal Barrier Resources System.

Coastal Barrier Resources System. "Coastal Barrier Resources System" means those undeveloped coastal barriers located on the Atlantic and Gulf coasts of the United States that are identified and generally depicted on maps entitled "Coastal Barrier Resources System," enacted by Congress, and on file and available for public inspection in the Office of the Director of the United States Fish and Wildlife Service, Department of the Interior.

APPENDIX A

DECISION--MAKING PROCESS FOR E.O. 11988


STEPS
1.
DETERMINE IF PROPOSED ACTION IS IN THE BASE* FLOODPLAIN
YES
NO
2. EARLY PUBLIC REVIEW
3. IDENTIFY & EVALUATE ALTERNATIVES TO LOCATING IN THE BASE* FLOODPLAIN
NO ACTION
IN THE BASE* FLOODPLAIN
NOT IN BASE* FLOODPLAIN
DOES THE ACTION HAVE IMPACTS IN THE BASE* FLOODPLAIN
YES
4. IDENTIFY IMPACTS OF PROPOSED ACTION
YES
DOES THE ACTION INDIRECTLY SUPPORT FLOODPLAIN DEVELOPMENT
NO
5. MINIMIZE, RESTORE AND PRESERVE
6. REEVALUATE ALTERNATIVES
NO ACTION
IN THE BASE* FLOODPLAIN
LIMIT ACTION - RETURN TO STEP 3
7. FINDINGS AND PUBLIC EXPLANATION
8.
IMPLEMENT ACTION

*FOR CRITICAL ACTIONS SUBSTITUTE "500 YEAR" FOR "BASE".

best copy available

APPENDIX B—SOURCES OF FLOODPLAIN INFORMATION AND TECHNICAL ASSISTANCE SERVICES FOR DETERMINING WHETHER A LOCATION IS IN A FLOODPLAIN

Agency*	Floodplain Maps and Profiles		Technical Assistance Services*
	Riverine	Coastal	
Department of Agriculture:			
Soil Conservation Service	●	●	●
Department of the Army:			
Corps of Engineers	●	●	●
Department of Commerce:			
National Oceanic Atmospheric Administration		●	●
Department of Housing and Urban Development:			
Federal Housing Administration			●
Federal Insurance Administration	●	●	●
Department of the Interior:			
Geological Survey	●	●	●
Bureau of Land Management	●	●	
Bureau of Reclamation	●		●
Tennessee Valley Authority	●		●
Delaware River Basin Commission	●	●	●
Susquehanna River Basin Commission	●		●
States	Varies from State to State		

*See Appendix A, WRC Guidelines, for detailed description.

PART 117—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF SBA—EFFECTUATION OF THE AGE DISCRIMINATION ACT OF 1975, AS AMENDED

Sec.
117.1 Purpose.
117.2 Application of this part.
117.3 Definitions.
117.4 Discrimination prohibited and exceptions.
117.5 Illustrative applications.
117.6 Remedial and affirmative action by recipients.
117.7 Assurances required.
117.8 Responsibilities of SBA recipients.
117.9 Compliance information.
117.10 Review procedures.
117.11 Complaint procedures.
117.12 Mediation.
117.13 Investigation and resolution of matters.
117.14 Intimidating or retaliatory acts prohibited.
117.15 Procedure for effecting compliance.
117.16 Hearings.
117.17 Decisions and notices.
117.18 Judicial review.
117.19 Effect on other regulations.
117.20 Supervision and coordination.
APPENDIX A

AUTHORITY: Age Discrimination Act of 1975, 42 U.S.C. 6101 et seq.

SOURCE: 50 FR 41648, Oct. 11, 1985, unless otherwise noted.

§ 117.1 Purpose.

The purpose of this part is to effectuate the provisions of The Age Discrimination Act of 1975, as amended (hereinafter referred to as the "Act"), to the end that no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under programs receiving financial assistance or any financial activities of the Small Business Administration to which this Act applies. The Act also permits recipients of Federal funds to continue to use certain age distinctions and other factors other than age which meet the requirements of the Act and these regulations in the conduct of programs and the provision of services to the public.

§ 117.2 Application of this part.

(a) This part applies to all recipients of assistance under programs administered by the Small Business Administration and to programs of financial assistance by the Small Business Administration, whether or not listed in Appendix A.

(b) For the purposes of this part, the prohibition against age discrimination applies to natural persons of all ages.

(c) This part does not apply to the employment practices of any recipients.

§ 117.3 Definitions.

As used in this part:

(a) The term "act" means the Age Discrimination Act of 1975, as amended (Title III of Pub. L. 94-135).

(b) The term "action" means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard, or method of administration.

(c) The term "age" means how old a person is, or the number of years from the date of a person's birth.

(d) The term "age distinction" means any action using age or an age-related term.

(e) The term "age-related" means a word or words which necessarily imply a particular age or range of ages (for example, "children," "adult," "older persons," but not "student").

(f) The term "agency" means a Federal department or agency that is empowered to extend financial assistance.

(g) The term "applicant" means one who applies for Federal financial assistance.

(h) The term "Federal financial assistance" includes: (1) Grants and loans of Federal funds; (2) the grant or donation of Federal property and interests in property; (3) the detail of Federal personnel; (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration, or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(i) The term "normal operation" means the operation of a business or activity without significant changes that would impair its ability to meet its objectives.

(j) The term "recipient" means one who receives any Federal financial assistance under any program administered by the Small Business Administration. (See Appendix A.) The term "recipient" also shall be deemed to include "subrecipients" of SBA financial assistance.

(k) The term "SBA" means the Small Business Administration.

(l) The term "subrecipient" means any business concern that receives Federal financial assistance from the primary recipient of such financial assistance. A subrecipient is generally regarded as a recipient of Federal financial assistance and has all the duties of a recipient in these regulations.

(m) The term "statutory objective" means the purposes of the legislation as stated in an act, statute or ordinance or can be shown in the legislative history of any Federal statute, State statute, or local statute or ordinance adopted by an elected, general purpose legislative body.

§ 117.4 Discrimination prohibited and exceptions.

(a) *General.* To the extent that this part applies, no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any business or activity receiving Federal financial assistance.

(b) *Specific discriminatory actions prohibited.* To the extent that this part applies, a recipient business or other activity may not, directly or through contractual arrangements, on the ground of age:

(1) Deny an individual any services, financial aid or other benefit provided by the business or other activity, except where sanctioned by one of the exceptions stated in § 117.4 (d), (e) or (f) of this section.

(2) Provide any service, financial aid or other benefit, except as sanctioned by one of the exceptions stated below, in such a way as to deny or limit persons in their efforts to participate in federally-assisted programs;

(3) Treat an individual differently from others, except as sanctioned by an exception stated below, in determining whether the person satisfied any admission, enrollment, eligibility, membership, or other requirement or condition which individuals must meet

in order to be provided any service, financial aid or other benefit provided by the business or activity.

(c) The specific forms of prohibited discrimination in paragraph (b) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(d) *Exception 1.* A recipient is permitted to take an action otherwise prohibited by paragraphs (a) and (b) of this section, if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a business or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a business or activity, if:

(1) Age is used as a measure or approximation of one or more other characteristics; and

(2) The other characteristic(s) must be measured or approximated in order for the normal operation of the business or activity to continue, or to achieve any statutory objective of the business or activity; and

(3) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(4) The other characteristic(s) are impractical to measure directly on an individual basis.

NOTE: All of the above factors must be met in order to exclude a business activity from the provisions of this part.

(e) *Exception 2.* A recipient is permitted to take an action otherwise prohibited by paragraphs (a) and (b) of this section which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age if the factor bears a direct and substantial relationship to the normal operation of the business or activity or to the achievement of a statutory objective.

(f) *Exception 3.* A recipient is permitted to take an action otherwise prohibited by paragraphs (a) and (b) of this section if an age distinction is contained in that part of a Federal, State or local statute or ordinance adopted by an elected general purpose legislative body which provides any benefits or assistance to, establishes criteria for participation in, or describes intended beneficiaries or target groups in age-related terms.

(g) The burden of proving that an age distinction or other action falls within the exceptions outlined in paragraphs (d), (e), and (f) of this section on the recipient of Federal financial assistance.

§ 117.5 Illustrative applications.

(a) *Discrimination in providing financial assistance.* Development companies and small business investment companies, which apply for or receive any financial assistance may not discriminate on the ground of age in providing financial assistance to small business concerns. Such discrimination prohibited by § 117.4 includes but is not limited to the failure or refusal, because of the age of the applicant, or the age of the applicant's principal owner or operating official to extend a loan or equity financing to any business concern; or, in the case of financing which has actually been extended, the failure or refusal because of the age of the recipient, or the age of recipient's principal owner or operating official to accord the recipient fair treatment and the customary courtesies regarding such matters as default, grace periods and the like.

(b) *Discrimination in accommodations or services.* Small Business Concerns and others who or which apply for or receive any financial assistance in a program administered by the Small Business Administration, such as but not limited to physicians, dentists, hospitals, schools, libraries, and other individuals or organizations may not discriminate in the treatment, accommodations or services they provide to their patients, students, members, passengers, or members of the public, except when the normal operation or statutory objective of the business or activity of the intended beneficiary is designated in age-related terms, whether or not operated for profit. Action by such business or activity to be excluded from compliance with this regulation must fall within the exceptions enumerated in § 117.4 (d), (e), and (f) of this part.

(c) The discrimination prohibited by § 117.5(b) includes, but is not limited to the failure or refusal, because of age, to accept a patient, student, member, customer, client, or passenger, except when the imposition of this prohibition would interfere with the normal operation of the business, e.g., pediatricians, nursery schools, geriatric clinics.

§ 117.6 Remedial and affirmative action by recipients.

(a) Where a recipient is found to have discriminated on the basis of age, the recipient shall take any remedial action which the Agency may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, both recipients may be required to take remedial action.

(b) Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's business or program on the basis of age.

(c) If a recipient operating a program which serves the elderly or children in addition to persons of other ages, provides special benefits to the elderly or to children, the provision of those benefits shall be presumed to be voluntary affirmative action provided that it does not have the effect of excluding otherwise eligible persons from participation in the program.

§ 117.7 Assurances required.

An application for financial assistance under any program administered by the Small Business Administration shall, as a condition of its approval and the extension of such assistance, contain or be accompanied by an assurance that the recipient will comply with this part. SBA shall specify the form of the foregoing assurance for each program, and the extent to which like assurances will be required of contractors and subcontractors, transferees, successors, and other participants in the program.

§ 117.8 Responsibilities of SBA recipients.

(a) Each SBA recipient has the primary responsibility to ensure that its programs and activities are in compliance with the Act and these regulations, and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford SBA access to its records to the extent SBA finds necessary to determine whether the recipient is in compliance with the Act and these regulations. (OMB No. 3245 0076)

(b) Where a recipient passes on Federal financial assistance from SBA to subrecipients, the recipient shall provide the subrecipients written notice of their obligations under the Act and these regulations.

(c) Each recipient shall make necessary information about the Act and these regulations available to its program beneficiaries in order to inform them about the protections against discrimination provided by the Act and these regulations.

(d) Whenever an assessment indicates a violation of the Act and the SBA regulations, the recipient shall take corrective action.

§ 117.9 Compliance information.

(a) *Cooperation and assistance.* SBA shall, to the fullest extent practicable, seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Record Keeping.* Each recipient shall keep records in such form, and containing such information which SBA determines may be necessary to ascertain whether the recipient has complied or is complying with this part (OMB No. 3245 0076). In the case of a small business concern which receives financial assistance from a development company or from a small business investment company, the small business concern shall also keep such records and information as may be necessary to enable SBA to determine if the small business concern is complying with this part.

(c) Each recipient shall provide to SBA, upon request, information and reports which SBA determines are necessary to ascertain whether the recipient is complying with the Act and these regulations.

(d) *Access to sources of information.* Each recipient shall permit reasonable access by SBA during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of an applicant or recipient is in the exclusive possession of any other agency, institution or person and that agency, institution or person shall fail or refuse to furnish the information, the recipient shall so certify and shall set forth what efforts it has made to obtain the required information. The recipient will be held responsible for submitting the information. Failure to submit information or permit access to sources of information required by SBA will subject the recipient to enforcement procedure as provided in § 117.15 of this part.

(The information collection requirements contained in paragraph (c) approved by the Office of Management and Budget under control no. 3245-0076)

§ 117.10 Review procedures.

(a) SBA shall from time to time review the practices of recipients to determine whether they are complying with this part. As part of a compliance review or complaint investigation, SBA may require a recipient employing 15 or more full-time employees to complete a written self-evaluation, in a manner specified by the Agency, of any age distinction imposed in its program or activity receiving Federal financial assistance.

(b) If a compliance review or preaward review indicates a violation of the Act or these regulations, SBA will attempt to achieve voluntary compliance with the Act. If voluntary compliance with the recipient cannot be achieved, such recipient will be subject to the enforcement procedure contained in § 117.15 of these regulations. A refusal to permit an on-site compliance review during normal working hours may constitute noncompliance with this part.

§ 117.11 Complaint procedures.

(a) Any person who believes that he/she or any specific class of individuals is being or has been subjected to discrimination by SBA, a recipient, or an applicant for assistance, prohibited by this part may, by himself/herself or by a representative, file with SBA a written complaint. The complainant has the right to have a representative at all stages of the complaint procedure.

(b) A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time filing is extended by SBA. The Adminstrator, the Director, Office of Equal Employment Opportunity and Compliance, and the Chief, Office of Civil Rights Compliance, are the only officials who may waive the 180-day time limit for filing complaints under this part. SBA will consider the date a complaint is filed to be the date upon which the complaint is sufficient to be processed.

(c) Each complaint will be reviewed to ensure that it falls within the coverage of the Act and contains all information necessary for further processing.

(d) SBA will attempt to facilitate the filing of complaints wherever possible, including taking the following actions:

(1) Accepting as a sufficient complaint, any written statement which identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and is signed by the complainant.

(2) Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint.

(3) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure.

(4) Notifying the complainant and the recipient (or their representatives) of their right to contact the Chief, Office of Civil Rights Compliance, for information and assistance regarding the complaint resolution process.

(e) SBA will return to the complainant any complaint filed under the jurisdiction of this regulation, but found to be outside the jurisdiction of this regulation, and will state the reason(s) why it is outside the jurisdiction of this regulation.

§ 117.12 Mediation.

(a) SBA shall, after ensuring that the complaint falls within the coverage of this Act and all information necessary for further processing is contained therein, unless the age distinction complained of is clearly within an exception, promptly refer the complaint to the Federal Mediation and Conciliation Service (FMCS).

(b) SBA shall, to the extent possible, require the participation of the recipient and the complainant in the mediation process in an effort to reach a mutually satisfactory settlement of the complaint or make an informed judgment that an agreement is not possible. Both parties need not meet with the mediator at the same time.

(c) If the complainant and the recipient reach a mutually satisfactory resolution of the complaint during the mediation period, the mediator shall prepare a written statement of the agreement and have the complainant and recipient sign it.

(d) A copy of the written mediation agreement will be referred to SBA, and no further action will be taken unless it appears that either the complainant or the recipient (or other alleged discriminator subject to this part) fails to comply with the agreement.

(e) If at the end of 60 days after the receipt of a complaint by SBA, or at any time prior thereto, an agreement is reached or the mediator determines an agreement cannot be reached through mediation, the agreement or complaint will be returned to SBA.

(f) This 60-day period may be extended by the mediator, with the concurrence of SBA for not more than 30 days if the mediator determines that an agreement will likely be reached during the extended period.

(g) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained during the course of the mediation process without prior approval of the head of the agency appointing the mediator.

§ 117.13 Investigation and resolution of matters.

(a) SBA will make a prompt investigation whenever a compliance review indicates a possible failure to comply with this part by the recipient and additional information is needed by SBA to assure compliance with this part, or when an unresolved complaint has been returned by the FMCS, or when it appears that the complainant or the recipient is failing to comply with a mediation agreement. The investigation shall include a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient is complying, is not complying, or has failed to comply with this part.

(b) *Resolution of matters.* If an investigation indicates a failure to comply with this part, SBA will so inform the complainant, if applicable, and the recipient that the matter will be resolved by informal means that are mutually agreeable to the parties, whenever possible.

(1) If, during the course of an investigation, the matter is resolved by informal means, SBA will put any agreement in writing and have it signed by the parties and an authorized official of SBA.

(2) If investigation indicates a violation of the Act or these regulations, SBA will attempt to achieve voluntary compliance. If SBA cannot achieve voluntary compliance, it will begin enforcement as described in § 117.15.

(3) If an investigation does not warrant action, SBA will so inform the complainant, if applicable, and the recipient in writing.

§ 117.14 Intimidating or retaliatory acts prohibited.

No complainant, recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this part or because an individual or group has made a complaint, testified, assisted, or participated in any manner in an investigation, review, enforcement process, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, mediation, or judicial proceeding.

§ 117.15 Procedure for effecting compliance.

(a) *General.* (1) If there appears to be a failure or threatened failure to comply with this part by an applicant or recipient and if the noncompliance or threatened noncompliance cannot be resolved by informal means, compliance with this part may be effected by suspending, terminating, or refusing any financial assistance approved but not yet disbursed to an applicant. In the case of loans partially or fully disbursed, compliance with this part may be effected by calling, canceling, terminating, accelerating repayment, or suspending in whole or in part the Federal financial assistance provided. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge.

(2) In addition, compliance may be effected by any other means authorized by law. Such other means may include, but are not limited to:

(i) Action by SBA to accelerate the maturity of the recipient's obligation;

(ii) Referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States or obligations of the recipient created by the Act or this part; and

(iii) Use of any requirement of or referral to any Federal, State or local government agency that will have the effect of correcting a violation of the Act or these regulations.

(3) If there appears to be a failure or threatened failure to comply with this part by an SBA program office or official, the Chief, Office of Civil Rights Compliance, through the Director, Office of Equal Employment Opportunity and Compliance, will recommend appropriate corrective action to the Administrator. Any resulting adverse action against an SBA employee shall follow Office of Personnel Management and SBA procedures for such action.

(b) *Noncompliance with §§ 117.7 and 117.9.* If an applicant fails or refuses to furnish an assurance required under § 117.7, or fails to provide information or allow SBA access to information under § 117.9 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to those sections, Federal financial assistance may be deferred for a period not to exceed 60 days after the applicant has received a notice for an opportunity for hearing under § 117.16, or unless a hearing has begun within that time, or the time for beginning the hearing has been extended by mutual consent of the recipient and the Agency, for purposes of determining what constitutes mutual consent, the Agency shall be deemed to have consented to any extension requested by the recipient and granted by the administrative law judge (hearing officer), whether or not the Agency initially approved the extension. A deferral may not continue for more than 30 days after the close of the hearing, unless the hearing results in a finding against the applicant or recipient.

(c) SBA will not take action toward accelerating repayment, suspending, terminating, or refusing financial assistance until:

(1) SBA has advised the applicant or recipient of the failure to comply and has determined that compliance cannot be secured by voluntary means;

(2) There has been an express finding on the record, after an opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part;

(3) The action has been approved by the Administrator of SBA pursuant to § 117.17; and

(4) The expiration of 30 days after SBA has filed with the committee of the House and the committee of the

Senate having legislative jurisdiction over the form of financial assistance involved, a full written report of the circumstances and the grounds for such action.

(d) Other means authorized by law. No action to effect compliance by any other means authorized by law shall be taken until:

(1) SBA has determined that compliance cannot be secured by voluntary means;

(2) The action has been approved by the Administrator or designee;

(3) The expiration of 30 days after SBA has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the form of financial assistance involved, a full written report of the circumstances and the grounds for such action;

(4) The applicant or recipient has been notified of the failure to comply, and of the action to be taken to effect compliance; and

(5) The expiration of at least 10 days from the mailing of such notice to the applicant or recipient or other person. During this period of at least 10 days from the mailing of such notice to the applicant or recipient or other person, additional efforts shall be made to persuade the applicant or recipient to comply with this part and to take such corrective action as may be appropriate.

§ 117.16 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 117.15, reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either.

(1) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request the Office of Hearings and Appeals (OHA) that the matter be scheduled for hearing; or

(2) Advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing and as consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at OHA in Washington, DC, at a time fixed by OHA unless that office determines that the convenience of the complainant, applicant, recipient or SBA requires that another place be selected. Hearings shall be held before an administrative law judge designated in accordance with the Administrative Procedure Act.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and SBA shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearings, decisions, and any administrative review shall be conducted in conformity with the Administrative Procedure Act and 13 CFR Part 134. Such rules of procedure should be consistent with this section, relate to the conduct of the hearing, provide for giving of notices to those referred to in paragraph (a) of this section, taking of testimony, exhibits, arguments, and briefs, request for findings and other related matters. SBA, the complainant, if any, and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing, or as determined by the administrative law judge conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence may be waived by the administrative law judge conducting a hearing pursuant to this part, but rules or principles designed to assure production of the most credible evidence available, and

subject testimony to test by cross-examination shall be applied where reasonably necessary. The administrative law judge may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance or threatened noncompliance with this part, with respect to two or more forms of financial assistance to which this part applies, or noncompliance with this part and the regulations of one or more other Federal agencies issued under the Act, the Administrator may, by agreement with such other agencies, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules and procedures not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 117.17.

§ 117.17 Decisions and notices.

(a) *Decision by an administrative law judge.* If the hearing is held by an administrative law judge, such administrative law judge shall either make an initial decision, if so authorized, or certify the entire record, including recommended findings and proposed decision, to the Administrator for a final decision and a copy of such initial decision or certification shall be mailed to the applicant or recipient and the complainant. Where the initial decision is made by the administrative law judge, the applicant or recipient may, within 30 days of the mailing of such notice of initial decision, file with the Administrator exceptions to the initial decision, with the reasons therefor. In the absence of exceptions, the Administrator may, by motion within 45 days after the initial decision, serve on the applicant or recipient a notice that he/she will review the decision. Upon the filing of such exceptions or of such notice of review, the Administrator shall review the initial decision and issue his/her decision thereon, including the reasons therefor. The decision of the Administrator shall be mailed promptly to the applicant or recipient, and the complainant, if any. In the absence of either exceptions or a notice of review, the initial decision shall constitute the final decision of the Administrator.

(b) *Decisions on record or review by the Administrator.* Whenever a record is certified to the Administrator for decision or the Administrator reviews the decision of an administrative law judge pursuant to paragraph (a) of this section, or whenever the Secretary of the Department of Health and Human Services or the Department of Justice conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file briefs or other written statements of its contentions and a copy of the final decision of the Administrator shall be given in writing to the applicant or recipient and the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 117.16, a decision shall be made by the Administrator on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of an administrative law judge or the Administrator shall set forth the ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Decision by the Administrator.* The Administrator shall make any final decision which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, acceleration repayment or the imposition of any other sanction available under the regulations or taken under other means authorized by law.

(f) *Content of orders.* The final decision may provide for accelerating of repayment, suspension or termination of, or refusal to approve, disburse, or continue Federal financial assistance, in whole or in part, under the programs involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will, thereafter, be extended under such program to the applicant or recipient determined by such decision to have failed to comply with this part, unless and until it corrects its noncompliance and satisfies the Administrator that it will fully comply with this part.

(g) *Post termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (e) of this section shall be restored to full eligibility to receive Federal financial assistance only if it satisfies the terms and conditions of that order for such eligibility and it brings itself into compliance with this regulation and provides reasonable assurance that it will fully comply with this regulation.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the Administrator to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the Administrator determines that those requirements have been satisfied, he/she shall restore such eligibility.

(3) If the Administrator denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes the denial to have been in error. It shall there upon be given an expeditious hearing, with a decision on the record, in accordance with rules and procedures issued by the Administrator. The applicant or recipient shall be restored to such eligibility if it proves at such hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

§ 117.18 Judicial review.

(a) The complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and the Agency has made no finding with regard to the complaint; or

(2) The Agency has issued a finding in favor of the recipient.

(b) If the Agency fails to make a finding within 180 days or issues a finding in favor of the recipient, the Agency shall:

(1) Advise the complainant of this fact;

(2) Advise the complainant of the right to file a civil action for injunctive relief; and

(3) Inform the complainant:

(i) That the complainant may bring a civil action only in a United States district court for the district in which the recipient is found or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint;

(iii) That before commencing the action the complainant shall give 30 days notice by registered mail to the Secretary of the Department of Health and Human Services, the Attorney General of the United States and the recipient;

(iv) That the notice must state: The alleged violation of the Act; the relief requested; the court in which the complainant is bringing the action; and whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

§ 117.19 Effect on other regulations.

(a) All regulations, orders or like directions heretofore issued by SBA which impose requirements designed to prohibit any discrimination against individuals on the grounds of age and which authorize the suspension or termination of or refusal to grant or to continue financial assistance to any applicant for or recipient of such assistance for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof):

(1) Executive Order 11246, as amended, and regulations issued thereunder;

(2) Title VI of the Civil Rights Act of 1964, as amended;

(3) The Equal Credit Opportunity Act, as amended and Regulation B of the Board of Governors of the Federal Reserve System, (12 CFR Part 202);

(4) Section 504 of the Rehabilitation Act of 1973, as amended;

(5) Title VIII of the Civil Rights Act of 1968;

(6) Title IX of the Educational Amendments of 1972;

(7) Section 633(b) of the Small Business Act;

(8) Part 113 of Title 13 of the Code of Federal Regulations (13 CFR 113); or

(9) Any other statute, order, regulation or instruction, insofar as such order, regulations, or instruction prohibits discrimination on the grounds of age in any program or situation to which this part is inapplicable on any other ground.

§ 117.20 Supervision and coordination.

The Administrator may from time to time assign to officials of SBA or to officials of other agencies of the Government with the consent of such agencies, responsibilities in connection with the effectuation of the purpose of the Act and this part (other than responsibility for final decision as provided in § 117.17), including the achievement of effective coordination and maximum uniformity within SBA and within the Executive Branch of the Government in the application of the Act, and this part to similar programs and in similar situations. Responsibility for administering and enforcing this part is assigned by the Administrator, to the Office of Civil Rights Compliance, Office of Equal Employment Opportunity and Compliance of the Small Business Administration.

APPENDIX A[1]

Name of program	Authority
Business Loans	Small Business Act, section 7(a).
Debtor State Development companies (501) and their small business concerns.	Small Business Investment Act, Title V.
Debtor State Development companies (502) and their small business concerns.	Small Business Investment Act, Title V.
Debtor certified development companies (503) and their small business concerns.	Small Business Investment Act, Title V.
Debtor small business investment companies and their small business concerns.	Small Business Investment Act, Title III.
Pollution Control	Small Business Investment Act, Title IV, Part A.
Disaster Loans:	
Physical, including riot	Small Business Act, section 7(b)(1).
Economic Injury (EIDL)	Small Business Act, section 7(b)(2).
Federal Action Loan Program.	Small Business Act, section 7(b)(3).
Small Business Institute	Small Business Act, section 8(b)(1).
Small Business Development Centers.	Small Business Act, section 21.
International Trade Program.	Small Business Act, section 22.
Technical and Management Assistance.	Small Business Act, section 7(j).

[1] None of the programs administered have any age distinctions except as statutorily required.

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APPENDIX A—MEMORANDUM OF UNDERSTANDING BETWEEN THE SMALL BUSINESS ADMINISTRATION AND THE UNITED STATES DEPARTMENT OF AGRICULTURE, FARMERS HOME ADMINISTRATION

AUTHORITY: 15 U.S.C. 634(b)(6) and 636(a) and (h).

SOURCE: 50 FR 12478, Mar. 28, 1985, unless otherwise noted

§ 120.1 General.

§ 120.1-1 Scope.

This part sets forth the broad policies and principles that the Small Business Administration (SBA) follows in deciding to grant or deny Financial Assistance under the authority of sec. 7(a) of the Small Business Act, 15 U.S.C. 636(a), administering and servicing loans, and overseeing the operations of all loan participants. This part does not apply to financial assistance provided under the Development Company loan program unless specifically referenced by Part 108 of this title. Frequently firms seeking a loan do not need financial assistance but are in need of management or financial counseling. SBA will, in these cases, provide such assistance through its various counseling programs.

§ 120.1-2 Pilot programs.

(a) In order to explore new directions or improved delivery of SBA services to small concerns, the Administrator of SBA may from time to time publish a notice in the FEDERAL REGISTER that certain rules will be suspended or modified for a limited period of time in a specified area.

(b) Such notice in the FEDERAL REGISTER shall clearly explain the reasons or grounds for the suspension or modification of SBA rules and comply with all applicable statutes and regulations.

§ 120.1-3 Savings clause.

Financial Assistance granted before March 28, 1985, shall be governed by the related contractual terms and the regulations then in effect. Nothing herein shall bar SBA enforcement action with respect to such Financial Assistance granted pursuant to contractual terms no longer in use or prior regulations no longer in effect. If any section or part of a section of these regulations shall be adjudged invalid, only that part shall be invalid, and the other parts shall not be affected thereby.

[50 FR 12478, Mar. 28, 1985; 50 FR 13310, Apr. 4, 1985]

§ 120.1-4 Captions.

Captions are inserted as required by the FEDERAL REGISTER for convenience only and are not part of the substance of these regulations. Defined terms are capitalized hereafter.

§ 120.2 Definitions.

The following terms have the same meaning wherever they are used in this part dealing with loan programs or Financial Assistance.

§ 120.2-1 Act.

Act means the Small Business Act, as amended, 15 U.S.C. 631 *et seq.*

§ 120.2-2 Associate.

Associate means an associate of the Lender. This includes any of the following persons who have, or had, an interest in the applicant during the period six months before the date of the application or at any time thereafter while the loan is outstanding:

(a) An officer or director of the Lender; and employee authorized to approve loans on the Lender's behalf; a holder directly or indirectly of 10 percent or more of the value of the Lender's stock, debt instruments or other securities; or a close relative or partner of any such person.

(b) Any person, business or other entity that, directly or indirectly, controls, is controlled by or is under common control with the Lender, or a close relative or partner of such person.

(c) Any enterprise in which 10 percent or more of the value of the stock or ownership interest, debt instruments and other securities are owned or controlled by one or more persons or entities acting in concert and named in paragraphs (a) and (b) of this definition (except a Small Business Investment Company licensed by SBA), or when any such person or entity is an officer, director or partner.

(d) A "close relative" as used in paragraphs (a) and (b) of this definition only, means ancestor, lineal descendant, brother or sister or the lineal descendant of either, spouse, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law who is a member of the person's household.

§ 120.2-3 Financial assistance.

Financial Assistance means any SBA loan, whether made directly by SBA or as an immediate participation or guarantee loan made in cooperation with a Financial Institution.

§ 120.2-4 Financial institution.

Financial Institution means banks, or other concerns whose regular course of business entails the making of commercial and industrial loans. The terms participating lender, participant, non-bank lender, small business lending company, bank or lender refer to Financial Institutions that are eligible to participate with SBA and have executed participation agreements.

§ 120.2-5 Lending institution or lender.

(See definition of Financial Institution, § 120.2-4.)

§ 120.2-6 Participant and participating lender.

(See definition of Financial Institution, § 120.2-4.)

§ 120.2-7 Qualified Indian tribe.

Qualified Indian Tribe means an Indian tribe, as defined in section 4(a) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), which owns and controls 100 percent of a small business concern.

§ 120.2-8 Small Business Lending Company (SBLC).

(See definition for Financial Institution, § 120.2-4.)

§ 120.3 Types of loans.

§ 120.3-1 Direct loans.

These loans are made by SBA without a Financial Institution's participation.

§ 120.3-2 Immediate Participation (IP) loans.

These are loans where either SBA or a Financial Institution agree to purchase from the other, immediately upon disbursement, an agreed percentage of each disbursement.

§ 120.3-3 Guaranty (GP) loans.

These loans, which are referred to as "deferred participations" in the Act, are loans made by a Lender to a small business under a guaranty agreement between the Lender and SBA. The agreement may be an individual agreement that pertains to one specific loan only or a blanket agreement that pertains to all such loans submitted by the Lender and approved by SBA. The Lender advances the total funds for the loan and SBA agrees to purchase, upon demand by the Lender and subject to specific conditions, an agreed portion of the outstanding balance.

§ 120.3-4 Priority of loan type.

Every applicant for a direct loan, immediate participation or guaranty loan must show that the loan is not available without SBA assistance. In addition, an applicant for a direct loan must show that neither an immediate participation nor a guaranty loan is available; an applicant for an immediate participation must show that a guaranty loan is not available.

(Approved by the Office of Management and Budget under control number 3245-0016)

Subpart A—Loan Making Policy

§ 120.100 General.

This subpart outlines the general loans policies covering eligibility, basic loan principles, interest rates, fees and other matters that apply to all SBA Financial Assistance.

§ 120.101 Eligibility of applicant.

§ 120.101-1 Applicant business concern.

(a) *Size.* To receive Financial Assistance from SBA the business applicant must qualify as a small business as defined in Part 121 (Size Standards) of this Chapter.

(b) *Loans to Agricultural Enterprises.* Small concerns engaged in farming and related businesses will be assisted by SBA in accordance with the Memorandum of Understanding signed by the SBA and the United States Department of Agriculture, Farmers Home Administration (FmHA), which appears as Appendix A to this part.

(c) *Loans to Indian Tribes.* Eligibility of small business concerns under section 7(a) of the Act shall not be adversely affected because any such concern is owned or controlled by an Indian Tribe as defined herein (see § 120.2-7).

§ 120.101-2 Type of business.

Most small concerns are eligible for Financial Assistance. The following types of businesses are, however, not eligible for SBA assistance except where otherwise stated in this section (§ 120.101-2).

(a) *Charitable, Religious or Other Non-profit Institutions.* Eleemosynary (charitable) institutions, other non-profit enterprises, government-owned corporations, consumer and marketing cooperatives, churches and organizations promoting religious objectives. An otherwise eligible small concern owned in whole or in part by a private non-profit organization is eligible, as is such a concern when owned and controlled by a qualified Indian Tribe. Sheltered workshops for the handicapped are eligible under a special program, see § 122.51. Producer cooperatives, including farm cooperatives, are eligible if "small" under Part 121 of this title, and if they are totally owned by otherwise eligible small concerns that share a common need, the cooperative is for the exclusive use of the members and the cooperative provides raw materials, equipment, inventories, supplies or the benefits of research and development or the facilities for such purposes. For qualified employee trusts, see § 122.56.

(b) *Media and Similar Concerns.* Concerns engaged in the creation, origination, expression, dissemination, propagation or distribution of ideas, values, thoughts, opinions or similar intellectual property, regardless of medium, form or content. Financial Assistance to such applications is barred in order to avoid Government interference, or the appearance of such interference, with the constitutionally protected freedoms of speech and press.

(1) Such concerns include:

(i) *Publishing.* Concerns that are publishers, including so-called "vanity" publishers, and producers, importers, exporters or distributors of communications, including newspapers, magazines, books, greeting cards, sheet music, pictures, posters, film, tape, live broadcasts, recordings or reproductions of sight, sound or musical programs or products, motion picture theaters or theatrical productions, and transportation concerns limited to the distribution or delivery of such products.

(ii) *Book Distributors.* Concerns that are book distributors, that specialize in selling products (books, newspapers, etc.) that promote or advocate ideas, including ideological, political, artistic or philosophical viewpoints. This does not prohibit assistance for a general merchandise store that is also selling books, newspapers, magazines, records, etc. or a general (as distinguished from a specialized) book or music, record, or videotape store.

(iii) *Schools.* Concerns operating schools that teach academic subjects. Nursery and pregrade schools are eligible if they are not primarily (50% or more of the time) engaged in teaching academic subjects, and vocational, technical or other nonacademic schools that do not also teach academic subjects are eligible. English taught in a vocational school may be considered a nonacademic subject if the instruction focuses on grammar, spelling, vocabulary, syntax or communications.

(2) Financial Assistance may, however, be extended to:

(i) *Printing.* A concern solely engaged in commercial or job printing, if there is no common ownership or other affiliation with another concern that is ineligible under this section [§ 120.101-2(b)], and the printer has no direct financial interest in the commercial success of the material produced.

(ii) *Advertisements and Technical Material.* A concern that produces advertisements and promotional material for a client's goods and services or technical or instructional material relating to a client's goods and services.

(iii) *Shoppers' Newspapers.* A concern that publishes shoppers' newspapers or circulars consisting of advertising material only, without editorial, narrative or filler material.

(iv) *Reproduction of Material.* A concern that provides motion picture, videotape, sound recording or theatrical technical production facilities, or the technical reproduction of motion picture, videotape or sound recordings without editorial or artistic participation, provided that the applicant concern has no direct interest in the commercial success of the material produced and that there is no common ownership or other affiliation between the applicant and the concern interested in the success of the material being produced.

(c) *Gambling.* Concerns that derive any part of their annual gross receipts, including rental income, or whose principal owner(s) derive any part of their annual income from gambling activities: *Provided, however,* That an otherwise eligible concern shall not become ineligible if it obtains less than one-third of its annual gross income (either before the loan application or during the life of the loan) from: (1) Commissions from the sale of official State lottery tickets under a State license; or (2) from gambling activities in those States where such activities are legal and supervised by the State.

(d) *Illegal Activities.* Concerns that are engaged in an illegal activity or are engaged in the production, servicing, or distribution by sale or otherwise of products or services used in connection with an illegal activity. This includes, but is not limited to, the production, servicing, distribution of paraphernalia, products or services that are used or intended to be used primarily or exclusively in connection with the unlawful use of drugs or controlled substances.

(e) *Lending or Investment, "Alter Ego".* Concerns primarily engaged in the business of lending or investing. Applicants that are otherwise eligible become ineligible where the purpose of the Financial Assistance is to finance investments that are neither related nor essential to the enterprise: *Provided, however,* That a small concern (holding company) owning and leasing or proposing to own and lease real or personal property to an otherwise eligible small concern (operating company) shall be eligible if all the following conditions are met:

(1) The holding company must be a small business organized and operated for profit as an individual proprietorship, partnership or corporation.

(2) It must be in the business of owning and leasing real or personal property to the operating company.

(3) It must propose to use loan proceeds for purposes that would be eligible uses for the operating company.

(4) It must use the loan proceeds solely to acquire or improve real or personal properly (including eligibile refinancing) for the exclusive use of such operating company.

(5) It must have ownership interest(s) completely identical with and in the same proportion as the ownership interest(s) in the operating company and agree in writing that such identity of ownership shall remain unchanged until the loan is paid in full or unless SBA gives written approval for an earlier change.

(6) It must pledge the lease between it and the operating company having a remaining term at least equal to the term of the loan and a lien on the property itself as collateral for the loan.

(7) The operating company must be either a guarantor or coborrower on the loan and the owner(s) of the operating company must guarantee the loan.

(f) *Parole or Probation.* Any concern if the proprietor, or a holder of 20 or more percent of the stock, or a partner, officer, director, or other persons, including hired managers, who have or will have the authority to speak for and commit the borrower in the management of the business, is currently incarcerated, on parole or on probation either pursuant to a pre-trial diversion or following conviction of a serious offense. The concern remains ineligible if the probation or parole is lifted solely because it is an impediment to obtaining a loan.

(g) *Multilevel Sales Distribution Plan.* Generally, any concern engaged in multilevel sales distribution plans of the "pyramid" type.

(h) *Loan Packager.* Any small business concern, where a substantial part (30% or more of its annual business volume) is the preparation of applications seeking Financial Assistance from the SBA. This is not intended to preclude Financial Assistance to an otherwise eligible small concern that regularly provides accounting or legal services to the public.

[50 FR 12478, Mar. 28, 1985, as amended at 51 FR 10363, Mar. 26, 1986]

§ 120.102 Limitations on loan purposes.

Small manufacturers, wholesalers, retailers, service concerns and other firms may borrow to finance construction, conversion or expansion; to purchase equipment, facilities, machinery, supplies or materials; to obtain working capital; or, at the discretion of SBA, ,to refinance outstanding notes payable. for additional special rules applicable to refinancing loans, see § 122.7-3(c). Financial Assistance shall not be granted if the direct or indirect purpose or result of granting the loan would be to:*

§ 120.102-1 Refinance unsecured loans.

Pay off inadequately secured creditor(s) who could suffer a loss if the debt is not refinanced, and SBA would probably sustain all or part of the same loss, or if SBA determined that the loan will not benefit the small concern: *Provided, however,* That (subject to intervening adverse change) SBA may reimburse a lender's interim advance from loan proceeds if made in compliance with a loan authorization previously issued by SBA. SBA shall not decline to guarantee a loan solely because such loan will refinance existing indebtedness of a small concern.*

§ 120.102-2 Revolving credit.

Except as permitted under § 122.54, create a revolving line of credit, such as "floor plan" financing.

§ 120.102-3 Pay obligation to owners.

Provides funds for payments, distributions or loans to owners, partners or shareholders of the applicant, exclusive of ordinary compensation for services rendered, and excluding the proceeds of loans to change ownership of the business as described in § 120.102-6 below.

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*Editorial Note: SBA will issue a correction document regarding § 120.102 at a later date.

§ 120.102-4 Refund debt to SBIC.

Refund a debt owed to a Small Business Investment Company (SBIC) (see Part 107 of this chapter). However, applications may be accepted from business applicants financed by an SBIC if SBA's collateral position will be superior to that of the SBIC.

(a) *Participation with an SBIC.* SBA shall not participate on either an immediate or guaranty basis with an SBIC (§§ 120-2 and 120-3). However, this does not limit the granting of a loan to an applicant which has or will have a loan or equity capital from an SBIC if SBA's collateral position is superior to that of the SBIC.

(b) *Loans to Firms Owned or Controlled by SBIC.* A loan may be made to a firm which is otherwise eligible but temporarily owned or controlled by an SBIC in compliance with the regulations in Part 107 of this chapter.

§ 120.102-5 Speculation.

Provide or free funds for speculation in any kind of real or personal property, whether tangible or intangible. Examples of speculations include "wildcatting" in oil and dealing in commodity futures.

§ 120.102-6 Change in ownership.

To effect a change in the ownership of the applicant unless the change: (a) Will promote the sound development or preserve the existence of a small concern; or (b) will contribute to a well-balanced national economy by facilitating ownership of small concerns by person(s) whose participation in the free enterprise system has been prevented or hampered because of economic, physical or social disadvantages or because of disadvantages in residential or business location.

NOTE: It is not intended that the Agency permit an individual(s) to borrow funds to purchase an interest in a business (except as permitted under § 122.55).

§ 120.102-7 Recreational or amusement enterprises.

Finance the construction, acquisition, conversion or operation of recreational or amusement enterprises unless: (a) They are open to the general public; and (b) they are properly licensed by the appropriate State or local authority. The character and reputation of the applicant will be given special consideration.

§ 120.102-8 Investment in property.

Finance the acquisition, construction, improvement or operation of personal or real property that is, or is to be, held for sale or investment (rental income) and is not be used in connection with the applicant's otherwise eligible small business. (See § 122.50 of this chapter for an exception.)

§ 120.102-9 Monopoly.

Have the effect of encouraging a monpoly or be inconsistent with the accepted standards of the American system of free enterprise.

§ 120.102-10 Conflict of interest.

Create, or appear to create, a conflict of interest. Without the prior written approval of the responsible district office, SBA shall not participate in or guarantee a loan to a business where the lender or an Associate has, or acquires while the loan is outstanding, an interest in any form which constitutes a conflict of interest, or the appearance thereof, with respect to the loan or the small concern. A field office reviewing a request for approval must determine whether a conflict of interest exists or appears to exist because of preferential treatment or the loss of independent, impartial and objective judgment. It must determine what corrective action, if any, will eliminate the actual or apparent conflict of interest and allow immediate processing of the loan application. The field office determination shall be based on such factors as the nature of the relationship between the Lender and its Associate, the significance of an Associate's influence on the actions or decisions of the Lender, the nature of the relationship with a close relative (e.g. would it tend to prejudice an objective decision) and such other factor(s) as may, directly or indirectly, contribute to or negate a conflict of interest. The following are examples (not an all inclusive listing) of where SBA shall not participate in or guarantee a loan:

(a) *Non-disclosure.* When the Lender's application to SBA does not contain a full disclosure statement, including negative statements to the best of its knowledge, from the Lender and from the small concern, relative to all relationships discussed in § 120.2-2 and an undertaking that no such relationship shall knowingly be created as long as the loan is outstanding. For an exception relating to the handicapped see § 122.51-5(a).

(b) *Purchase from Lender.* When the proceeds will directly or indirectly finance the purchase of real estate, personal property or services (including insurance) from the Lender, its Associate, or the designee of either, SBA may permit such on a case by case basis by making a written determination that the purchase is in the best interest of the applicant and will not impair the Lender's objective judgment in any decisions with respect to the making, servicing or liquidation of the loans. The applicant shall not contract with the Lender or an Associate for goods or services without written approval by SBA.

(c) *Reduced Exposure.* When the proceeds will reduce the exposure of the Participant unless SBA makes a written determination that it is in the best interest of the applicant and meets the requirements of § 122.7-3(c) of this chapter.

(d) *Repay Associate.* To repay or refinance a debt due an Associate unless SBA makes a written determination that the documentation in the file supports the repayment or refinancing. The evidence shall show that the terms of the existing debt are causing the applicant undue hardship, that refinancing the debt will relieve the hardship and the relief from the hardship is not available through extension or modification of the original debt or through refinancing with private lending sources.

(e) *Forward Commitment.* Where the Lender has issued a real estate forward commitment to a builder/developer with respect to a project of such builder/developer and the applicant for Financial Assistant proposes to use the proceeds to acquire space in such project.

(f) *Reinvestment in Lender.* When the applicant or its principals invest funds in the Participant Lender: *Provided, however,* That if the enabling authority of a Participant (such as a Production Credit Association) requires such investment, Participant may make a "side loan" not guaranteed by SBA and subordinated to SBA's Financial Assistance except that lender may hold a first lien on the securities representing such investment, and *Provided, further,* That the interest rate applicable to such side loan does not exceed SBA's maximum for guaranteed loans and the maturity is no shorter than that of SBA's Financial Assistance.

§ 120.102-11 Replacement of funds.

Replace funds already used for the purposes described in § 120.102.

§ 120.103 Lending criteria.

§ 120.103-1 Evidence of needs.

Applications for Financial Assistance shall be considered only when the desired credit is not otherwise available on reasonable terms from non-Federal sources. To establish that the credit is otherwise available, SBA shall:

(a) *Proof of Refusal.* (1) Direct or immediate participation loans: Require written proof of refusal from: (i) The applicant's bank of account; or if the amount of the loan exceeds that bank's legal or normal lending limit, from a correspondent bank with a legal or normal lending limit that is adequate to cover the loan; and (ii) from a second Financial Institution in cities with a population exceeding 200,000. The proof of refusal must be dated and signed and include the amount and terms requested and the reason for denial;

(2) *Guaranty Loans.* The certification a Lender makes in its application for a guaranty by SBA will generally be accepted as sufficient documentation in lieu of a letter(s) of decline.

(b) *Funds Otherwise Available.* Determine from financial statements or other financial information provided whether it appears that the funds are available: (1) From a private or public sale of securities issued by the applicant; (2) by disposal at a fair price of assets not necessary to the applicant's operation or growth; (3) through utilization, without undue hardship, of the resources of the owners, partners, management or principal shareholders. SBA may obtain the applicant's credit history from credit reporting agencies as part of the credit evaluation.

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§ 120.103-2 Credit evaluation.

In evaluating a loan application, SBA attaches importance to many factors including the character and reputation of the applicant and its principals, experience and depth of management, the inherent soundness of the business enterprise, the past earnings record and future prospects, the long-range possibilities of successful operation, and whether the granting of Financial Assistance has a sound business purpose. SBA may obtain from credit reporting agencies the applicant's credit history and rating.

(a) *Repayment.* The Act specifies that ". . . all loans shall be of such sound value or so secured as to reasonably assure repayment . . ." Therefore no Financial Assistance shall be extended unless there is reasonable assurance that the loan can be paid from the earnings of the business.

(b) *Sound Finances.* The applicant shall have enough equity invested or to invest so that, if SBA Financial Assistance is approved, it can operate on a sound financial basis.

(c) *Collateral.* Adequate collateral is required to reasonably protect the interest of the Government. The amount of collateral needed, considered along with other credit factors, is determined on a case-by-case basis. Proprietors, partners, officers, directors, and owners of 20 percent or more of the business shall generally be required to guarantee payment of the loan and, in SBA's discretion, to pledge personal assets to secure the guarantee. Inadequate collateral will not normally be used as the sole reason for decline unless the applicant refuses to pledge whatever worthwhile collateral is available.

(d) *Special Reports.* SBA may require professional appraisals of the applicant's assets, an engineering survey or feasibility study of the applicant's operation, earnings, management, competitive position or other such factors. The need will be determined by a review of the application and, when needed, the applicant is generally required to purchase the service and submit the report to SBA.

(e) *Insurance Coverage.* A small business is generally required to purchase and maintain hazard insurance and flood insurance (see Part 116 of this chapter). In some instances, life insurance on the principal(s) may also be required. The borrower must select the agent and carrier from whom the insurance is purchased and, generally, any new or additional insurance required should be reducing term insurance with an original face amount no greater than the amount of the loan. Any variation in the type of life insurance shall be authorized by SBA in writing. Any fee or commission for insurance purchased from the Lender or an Associate must be reported as a fee paid to the Lender. The purchase of insurance from the Lender or an Associate may not be required as a condition to accepting, processing, or approving a loan.

(f) *Compliance with Other Parts.* All Financial Assistance under this part shall require compliance with Parts 112, 113, 116 and 117 of this chapter. With respect to any Financial Assistance of SBA, Part 112 prohibits discrimination on the grounds of race, color, or national origin, Part 113 prohibits discrimination based on race, color, religion, sex, marital status, handicap or national origin with respect to all recipients of SBA Financial Assistance. Part 116 prescribes policies of general application set forth in several subparts. Subpart A sets forth SBA policies and criteria for giving special consideration to veterans and their survivors or dependents. Subpart B prescribes rules on the prohibition of SBA Financial Assistance for acquisition or construction in special flood hazard areas when persons eligible for flood insurance have not obtained it. Subpart C prohibits recipients of SBA Financial Assistance from using lead-based paint as described therein. Subpart D prescribes policies and procedures dealing with floodplain management and wetlands protection. When promulgated, Part 117 will cover the prohibition of discrimination based on age.

(g) *Tax Requirements.* If any portion of the loan proceeds will be used for paying wages of additional employees, the applicant shall be current on all payroll taxes, both Federal and State. It shall have a depository plan in operation for payment of future employee withholding taxes.

(h) *Bonding Requirements.* On all construction loans, a 100 percent payment and performance bond and builders risks/workman's compensation insurance must be supplied unless waived by SBA.

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§ 120.103–3 Reconsideration after decline.

Any applicant that is declined for size may appeal the decision only in accordance with Part 121 of this chapter. Otherwise, any applicant whose request (including request for a modification of an existing loan condition) has been declined shall have the right to present new or additional information to overcome the reason(s) for decline and request a reconsideration.

(a) *File Within 6 Months.* Applicant shall submit a written request for reconsideration to the office that processed and declined the application within six months of the date of the initial decline. After six months a new application is required. A request for reconsideration of a guaranty loan application must be submitted by the lender.

(b) *Additional Information.* The written request for reconsideration must contain all significant new or additional information which is expected to overcome the reason(s) for decline. Reconsideration requests without new information will not be accepted.

(c) *Reasons for Decline.* Decline of an application for one reason(s) does not waive the Agency's right to decline a request for reconsideration for another reason(s).

(d) *Appeal of Declined Reconsiderations.* An applicant whose request was declined on reconsideration shall have the right to request reconsideration at the next higher office. Such written requests for further reconsideration must be submitted to the office that processed the loan within 30 days of the last decline action, and shall specifically request reconsideration at the next higher office and shall contain the written justification for requesting a reversal of the decline action.

(e) *Finality of Review.* The decision of the regional office is final: *Provided, however,* That the Regional Administrator may refer a case to the Associate Administrator for Finance and Investment (AA/F&I), or the AA/F&I may request that a file be forwarded to the Central Office because of special circumstances. The term "special circumstances" refers to a policy reconsideration or reevaluation of an existing policy by the Agency, conflicting policy interpretations between two regional offices, alleged improper act by SBA personnel or other such considerations.

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§ 120.104 Fees.

§ 120.104–1 Guaranty fees.

The Financial Institution shall pay a guaranty fee to SBA for each loan. Acceptance of the guaranty fee by SBA shall not waive any right of SBA arising from the Lender's negligence, misconduct or violation of any provision of these regulations, the guaranty agreement or the loan authorization.

(a) *Amount.* SBA shall charge a guaranty fee on loans with maturities in excess of twelve months, equal to two percent (2%) of the guaranteed portion of the loan. For loans with a maturity of twelve (12) months or less, the guaranty fee shall be one-quarter (¼) of one percent of the guaranteed portion of the loan. (See § 122.6–1 of this Chapter with respect to loan maturities.)

(b) *When Payable.* The Lender shall pay the guaranty fee on a loan with a maturity not in excess of 12 months at the time the Lender submits the application for guaranty. The Lender shall pay the guaranty fee on a loan with a maturity in excess of 12 months within 90 calendar days of the date of SBA's approval as stated in the loan authorization. Like fees shall be paid for increases in the loan amount. If the guaranty fee is not paid by the Lender within this time period, SBA will send the Lender a written notice (bill) requesting payment. The guaranty shall be subject to termination if SBA does not receive the fee within the time period stated in the notice.

(c) *Who Pays.* The Participating Lender is responsible for paying the guaranty fee to SBA. For guaranty loans having a maturity of 12 months or less, the lender (having paid the fee to SBA) may charge borrower for the guaranty fee upon approval of the loan by SBA. For guaranty loans with maturities exceeding 12 months, a Lender (having paid the guaranty fee to SBA and made the first disbursement on the loan) may charge the borrower for the guaranty fee. The borrower may use loan proceeds to pay the fee.

(d) *Reinstatement of Guaranty.* SBA may, at its sole discretion, reinstate a guaranty that was cancelled for failure to pay the guaranty fee, where SBA determines that such Lender's failure was not intentional and not part of a recurring pattern. SBA will not reinstate a guaranty if the fee is unpaid at the time the borrower defaults and if such default continues uncured for sixty days or if SBA determines that there has been a substantial adverse change in the borrower's condition.

(e) *Refunds.* (1) SBA shall refund the guaranty fee submitted with the application for loans with a maturity of 12 months or less, when an application is withdrawn prior to approval by SBA, or declined by SBA, or when SBA substantially changes the Lender's loan terms and then approves the loan. When SBA's modified terms are unacceptable, the Lender must request refund in writing within 30 calendar days of such approval.

(2) SBA shall refund the guaranty fee for a loan with a maturity exceeding 12 months only when the Lender has not made any disbursement on the guaranteed loan and requests the refund and cancellation of the guaranty in writing.

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[50 FR 12478, Mar. 28, 1985, as amended at 51 FR 18436, May 20, 1986]

§ 120.104-2 Service and commitment fees.

(a) *Service Fees*—(1) *Regular Service.* The Lender may charge SBA a service fee for servicing immediate participation loans or guaranty loans where SBA has purchased its guaranty portion but has not assumed responsibility for servicing the loan. The Lender may also charge a service fee to a third party where the guaranty portion has been transferred by the Lender to a third party. The Lender shall deduct such fee only from interest collected for the account of SBA or a third party and only so long as the Lender is servicing the loan. The fee shall not be added to any amount the borrower is obligated to pay under the loan. Fees on guaranty loans after SBA purchase are determined by the initial percent of SBA guarantee. Where SBA's share of an immediate participation or guaranteed loan is seventy-five (75) percent or less, the service fee shall be three-eighths (⅜) of one (1) percent per annum on the unpaid principal balance of SBA's share of the loan. Where SBA's share of any immediate participation or guaranteed loan is in excess of seventy-five (75) percent, the service fee shall be one-fourth (¼) of one (1) percent per annum of the unpaid principal balance of SBA's share of the loan. The fee a Lender receives for servicing a loan for the benefit of a third party is negotiated between the two parties and is not subject to the limitations set forth above.

(2) *Loan Extension.* An additional service fee not exceeding one (1) percent of the outstanding amount of the principal may be paid by the borrower to the Lender in consideration for extending the term or refinancing the indebtedness where the extension results in a term that exceeds ten years.

(3) *Extraordinary Service.* Subject to prior written SBA approval, if a loan will have extraordinary servicing needs, a Lender may charge the applicant a service fee not to exceed two (2) percent per annum on the outstanding balance of such loan, or in the case of construction loans, two (2) percent of the amount approved. If the extraordinary services are required only for part of the loan, or for part of the collateral for a loan, such service fee shall be applied only to that part of the loan, or for the part secured by such collateral. In no event may such service fee represent additional interest or profit on the loan. The fee charged shall be commensurate with the extra service provided and shall be requested by the Lender and justified in writing prior to approval of the loan.

(b) *No Late Payment or Prepayment Fees.* Fees for handling late payments and fees or penalties for partial or full prepayment of the loan shall not be charged in connection with any SBA loans.

(c) *Commitment Fee for Export Revolving Line of Credit (ERLC) Loans.* After SBA approves a loan under the ERLC program a Lender may charge the borrower a commitment fee of one-quarter (¼) of one (1) percent (or $200 minimum) of the loan. (See Section 122.54-4 of this Title relating to Export Revolving Lines of Credit.)

(d) *Fees for Representatives.* Except as herein provided, no applicant for SBA Financial Assistance shall be required to pay the Lender, an Associate of the Lender or any party designated by either, any fees or charges, for any goods or services, including insurance as a condition of the Lender's participation in an SBA loan. See also Parts 103 and 104 of this title, especially §103.13-5.

(e) *Fees for Other Services.* Payment of bonus, or brokerage fees or commissions for the purpose of, or in connection with, obtaining financial assistance through SBA is prohibited. A Lender or Associate may charge an applicant reasonable fees on an hourly basis for necessary services actually performed at the request and for the primary benefit of the applicant. Nothing contained herein shall be deemed to authorize any Lender to impose upon an applicant fees or charges (including origination or packaging fees), any part of which defrays the Lender's overhead cost; for example, payments for services of counsel, accountants, financial analysts, etc., who are salaried employees of the Lender or its Associate. An opinion on the validity of the loan or its compliance with SBA requirements serves the interest of the Lender and is part of its overhead cost. If the Lender needs additional appraisals, abstracts of title or other record searches for the processing or as a condition of the disbursement of a loan, the Lender or an Associate (with the consent of the applicant in either case) may prepare such documentation for a reasonable fee. Legible copies of any such documents shall be made available to the applicant, together with any supporting workpapers that the applicant may request. If the same law firm represents both Lender and applicant, with the applicant's consent and pursuant to applicable bar and court rules, such law firm may charge applicant reasonable fees for the services rendered to and for the benefit of the applicant. SBA has no national standard as to what is reasonable. The SBA district offices determine what fee is reasonable on a case by case basis. A Lender may be reimbursed by the borrower for any reasonable out-of-pocket expenses incurred for filing or recordation necessary to perfect a security interest in the assets of the borrower, including title insurance. A Lender shall not require that borrower pay points, and add-on interest may not be used. A Lender may receive the fees authorized under this paragraph, and no others, whether or not the requested loan is made.

(f) *Report on Fees.* The applicant shall certify the names of all attorneys, accountants or other representatives, including the Participating Lender or its Associates, engaged by the applicant for a fee in connection with the Financial Assistance being requested, as well as the amount paid. SBA Form 159 (Compensation Agreement) shall be used therefor.

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§ 120.105 Other legal requirements.

SBA loans are also subject to the provisions and requirements of other legislation such as the Freedom of Information, Privacy, Right to Financial Privacy, Paperwork Reduction, Flood Disaster Protection, Lead-Based Paint Poisoning Prevention, Equal Credit Opportunity, Occupational Safety and Health, Consumer Credit Protection Acts, Civil Rights Legislation and various Executive orders. Therefore, SBA may request data, agreements, or acknowledgements to support or document compliance with, and respond to reporting requirements of, these statutes in addition to the data required to make an informed credit decision. (See Parts 112, 113, 116 and 117 of this chapter.)

Subpart B—Loan Administration

§ 120.200 General.

This subpart outlines the general loan administration policies applicable to SBA Financial Assistance.

§ 120.200-1 Servicing direct or immediate participation loans.

Immediate participation loans which are closed by the Lender shall be serviced by the Lender, and immediate participation loans or direct loans closed by SBA shall be administered by SBA. However, SBA reserves the right to transfer the servicing of an immediate participation loan from the Lender to SBA and, with mutual agreement, from SBA to the Lender.

§ 120.200-2 Servicing guaranteed loans.

Guaranteed loans shall be serviced by the Lender. The Lender shall hold the note, instruments of hypothecation, and all other agreements, documents, and instruments required in connection with such loans. The Lender shall receive all payments of principal and interest on the loan until such time as SBA may complete the purchase of its guaranteed share of the loan, i.e., when SBA perfects the paperwork necessary to process disbursement and SBA's purchase of its share of a guaranteed loan is complete. The Lender shall thereupon assign the note and the other loan instruments to SBA and loan servicing shall become the responsibility of SBA. With SBA's written consent the Lender may continue to service the loan after purchase. In such case, the Lender shall execute a certificate of interest evidencing SBA's percentage of the loan and shall continue to service the loan and be the holder of the note and the other instruments, until SBA makes a written request for the transfer of loan servicing to SBA; the Lender shall thereupon assign and deliver to SBA all loan instruments immediately after receipt of such a transfer request from SBA.

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§ 120.201 Servicing requirements.

§ 120.201-1 Prior consent required.

The holder of the note shall not, without the prior written consent of the other participant:

(a) *Alteration.* Make or consent to any substantial alteration in the terms or conditions of any loan instrument. For the purpose of this paragraph, "substantial" includes, but is not limited to, increases in principal amount or interest rate or any action that benefits or confers a preference on the holder;

(b) *Release of Collateral.* Make or consent to releases of collateral having a cumulative value, as reasonably determined by the holder of the note, which is more than 20 percent of the original loan amount;

(c) *Accelerate Maturity.* Accelerate the maturity of the note;

(d) *Sue.* Sue upon any loan instrument;

(e) *Waive Claim.* Waive any claim against any borrower, guarantor, obligor or standby creditor arising out of any loan instrument;

(f) *Increase Amount of Prior Lien.* Increase the amount of any prior lien held by the Lender on property securing an SBA guaranteed loan.

§ 120.202 SBA purchase of guaranteed loans.

§ 120.202-1 SBA purchase determination.

SBA shall have the right at any time to purchase its guaranteed percentage of a loan if SBA shall determine that such purchase is in the best interest of the Government. If the borrower has defaulted in payment of any installment of principal or interest when due and if the default continues uncured for more than 60 calendar days (or less if SBA agrees), Lender may demand in writing that SBA purchase the guaranteed percentage of the loan.

§ 120.202-2 No waiver.

Purchase by SBA of its guaranteed share shall not waive any right of SBA arising from Lender's negligence, misconduct or violation of these regulations, the guaranty agreement or the loan instruments.

§ 120.202-3 Rate of interest to borrower.

When SBA purchases its share of a loan, the rate of interest payable by the borrower on the SBA share shall be the same as the rate of interest provided in the note. On loans with a fluctuating interest rate, the interest paid to SBA shall be the rate in effect at the time of default where a default has occurred, or the rate in effect at the time of purchase where no default has occurred.

§ 120.202-4 Accrued interest to holder.

When SBA purchases its guaranteed share, its payment to the holder of accrued interest to the date of purchase shall be at the rate of interest provided in the note. On those loans with a fluctuating interest rate, the SBA's payment of accrued interest shall be at that rate in effect at the time of default when a default has occurred, or at the rate in effect at the time of purchase where no default has occurred.

§ 120.202-5 When SBA does not purchase.

SBA shall be released from obligation to purchase its share of the guaranteed loan unless the Lender has substantially complied with all of the provisions of these regulations, the Guaranty Agreement and the Loan Authorization, and has not failed to disclose material facts, and has made no material misrepresentations to SBA with respect to the loan; or upon the happening of any one or more of the following events:

(a) *Defective Closing.* Failure of the Lender to close and disburse the loan substantially in accordance with the terms and requirements of the loan instruments (including the loan authorization), or to service the loan in a prudent manner, either of which may result in a substantial loss on the loan;

(b) *Full Payment.* Payment in full of the amount due on the note;

(c) *Request to Terminate.* Receipt by SBA of written request from the Lender to terminate the guarantee; or

(d) *Non-Payment of Guaranty Fee.* Failure of the Lender to pay the guaranty fee as required by § 120.104-1(c).

(e) *Late Demand.* Failure of the Lender to demand purchase of an unpaid guaranteed portion or to request an extension of maturity within one year after the maturity of the note: *Provided, however,* That if SBA denies the request to extend the loan, the Lender shall have 6 months from the date of such denial to demand that SBA purchase the guaranteed portion of the loan.

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§ 120.203 Collection policy.

It is the policy of SBA to insist upon prompt payments, and upon compliance with all conditions of the note, mortgage and loan agreement. Any request for relief should be directed to the Participating Lender or the SBA field office, whichever is servicing the loan. In order to aid and assist borrowers in the discharge of their finanical obligations, it is the policy of SBA to advise and counsel with borrowers in all aspects of their business, with a view to the development of a healthy, growing concern.

§ 120.204 Liquidation of loans and security.

§ 120.204-1 Liquidation policy.

(a) *Assist and Protect Business.* It is the policy of SBA to aid, counsel, assist and protect small concerns to which loans have been made. Ordinarily, the liquidation of the property securing a loan will not be resorted to if there appears to be any reasonable prospect that the loan may be repaid by the borrower or a guarantor (other than SBA) within a reasonable period.

(b) *Sale and Conversion of Loans*—(1) *Sale of Direct Loan.* SBA is authorized to effect the sale of any direct loan upon payment of the full amount of the borrower's obligation. The consent of the borrower is not required.

(2) *Conversion of Direct Loans.* Direct loans may be converted to guaranteed loans or to immediate participation loans.

(3) *Conversion of Immediate Participation Loans.* An immediate participation loan may be converted to a guaranteed loan or a loan wholly owned by the Participating Institution without the borrower's approval upon payment of the unpaid amount of SBA's participation in such loan, together with accrued interest due thereon and any advances that may have been made by SBA.

§ 120.204-2 Foreclosure of collateral.

(a) *Liquidation of Collateral.* Liquidation of the security may be approved when any one of the following conditions exists:

(1) The borrower is in default in the payment of one or more installments due under a note or has defaulted in the performance of conditions contained in the note, loan agreement, other instrument, or a security instrument, and the failure to cure, or to attempt to cure, such default is due to: (i) Lack of diligence; (ii) lack of managerial ability which the borrower has failed to correct; (iii) other circumstances within the borrower's control; or (iv) the inability of the borrower to remedy the default;

(2) Foreclosure of other creditor's rights proceedings have been instituted which may jeopardize the interests of the Government;

(3) A borrower has filed a voluntary petition or an involuntary petition has been filed against the borrower pursuant to any of the provisions of the Bankruptcy Code, as amended;

(4) A receiver has been appointed or other judicial action is taken for the purpose of liquidating the borrower's assets.

(5) The borrower has made an assignment for the benefit of creditors;

(6) The borrower is in default and has discontinued or abandoned the business or has not submitted an acceptable plan of payment;

(7) The borrower has failed to disclose in the loan application or during the life of the loan any fact deemed by SBA to be material; or a misrepresentation by, on behalf of, or for the benefit of, the borrower has been made to SBA.

(b) *Homestead Protection for Farmers.* Residences and a reasonable amount of adjoining real property that are presently collateral purchased by the SBA (COLPUR) and which were acquired by SBA as a result of a foreclosure, a voluntary conveyance, or a conveyance to the Government by a Trustee in bankruptcy and which are still occupied by the borrower of the farm loan (see § 120.204-2(b)(1) below), may be leased by SBA to the borrower under the terms of this section.

(1) *Definitions:*

"*Farm loan*" means any loan made or guaranteed by the Administrator under the Small Business Act (15 U.S.C. 631 *et seq.*) for any of the purposes authorized for loans under subtitles A or B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq*) including emergency loans, farm/ranch operating loans, farm/ranch ownership loans and soil and water loans; or any disaster loan made to an agricultural enterprise as defined in 13 CFR 123.17.

"*Homestead property*" means the principal residence and a reasonable amount of adjoining property possessed and occupied by a farm loan borrower.

"*Reasonable amount of adjoining property*" means that amount of land which is necessary for family maintenance, but not more than 5 acres, unless local codes require a larger size lot, or additional land is needed for access to the property, to assure a source of water or to provide for sanitation facilities.

(2) *Eligibility.* In order to be an eligible applicant to occupy honestead property under a lease from SBA, a borrower of a farm loan made or guaranteed by the Administrator must meet all of the following eligibility requirements:

(i) Apply for such occupancy during the three-year period beginning on December 22, 1985, and ending at the close of business on December 21, 1988, to the SBA branch or district office which services the farm loan.

(ii) Provide evidence of gross annual farm or ranch sales of at least $40,000 in at least 2 calendar years during the 5-year period beginning on January 1, 1981, and ending December 31, 1985, (or the equivalent crop or fiscal years).

(iii) The applicant and his/her spouse, if the applicant is married, must have received at least 60 percent of his (their) gross annual income from farming or ranching during at least 2 years of the 5-year period beginning on January 1, 1981, and ending December 31, 1985, (or the equivalent crop of fiscal years).

(iv) The applicant must have possessed and occupied the residence and engaged in farming or ranching operations on adjoining land, or other land controlled by the borrower during the 5-year period beginning on January 1, 1981, and ending December 31, 1985, (or the equivalent crop or fiscal years).

(v) The applicant must have sufficient income to make rental payments, maintain the property in good condition and agree to all terms and conditions as set forth in this section and in the lease agreement entered into between the successful applicant and the SBA.

(vi) The applicant must be an individual who was personally liable for the farm loan. The farm loan could have been made to an individual or an entity, so long as the applicant was personally liable for the debt.

(vii) The applicant must personally occupy the residence as his/her personal residence during the term of the lease and must not own other suitable housing.

(viii) The borrower of the farm loan must have exhausted all remedies, as determined by SBA, for the extension or restructuring of such loan(s).

(ix) When more than one member of an entity, such as a corporation or a partnership, each possessed and occupied a separate homestead property, each may apply for homestead protection for his individual residence.

(x) The applicant must have been released from liability or have compromised or settled the SBA debt(s) or the debt(s) must have been discharged in bankruptcy.

(3) *Appeal rights.* If the application for homestead protection is denied by the SBA branch or district office which serviced the loan, the borrower shall be notified in writing of the decision to deny homestead protection. The borrower may then appeal the decision to the Regional Administrator having jurisdiction over the SBA branch or district office which initially denied the application for homestead protection. The property will not be leased or sold until any such appeal is concluded.

(4) *Requirements of the lease.* (i) The lease between SBA and the successful applicant may cover only the residence and a reasonable amount of land that is necessary for family maintenance. Not more than 5 acres of land will be leased with the residence unless local codes require a larger size lot, or additional land is needed for access to the residence, to assure a source of water or provide for sanitation facilities. Sources of water, power lines, utility lines, sanitation facilities and/or access to property may be located outside the land to be included with the residence provided appropriate rights or easements are obtained. Appropriate arrangements will be made for continued use of water sources, utilities, and sanitation facilities that will be jointly used. A right of entry and egress to a public way must exist or be provided to the homestead property.

(ii) No lease will be approved if upon exercise of the option to purchase (see (b)(6) of this section), the remaining COLPUR is not provided with entry and egress to a public way.

(iii) A survey and legal description of the property to be leased and/or purchased will be obtained by SBA. The cost of the survey will be charged to the COLPUR account.

(5) *Appraisal.* The market value of the property, as improved, will be determined by an independent appraisal made within 6 months after the borrower makes a successful application for homestead protection. The cost of the appraisal will be charged to the COLPUR account.

(6) *Rates and terms.* The lease will be offered for a period of not less than 3 years nor more than 5 years and will contain an option to purchase. A lease of less than 5 years may be renewed, but not beyond 5 years from the date of the original lease. This requirement will be added as a stipulation to any homestead lease.

(i) The amount of the lease will be based upon equivalent rents charged for similar residential properties in the area in which the residence is located. The SBA will document in its COLPUR file a sufficient number of equivalent rents charged in the area for such properties to support the lease amount.

(ii) Lease payments will be retained by the Government and remitted according to SBA instructions contained within the lease.

(iii) Failure to make lease payments as scheduled or to maintain the property in good condition shall constitute cause for the termination of all rights of the lessee to possession and occupancy of the homestead property under this section.

(iv) Any intereference by the leassee with the Government's efforts to lease or sell the remainder of the COLPUR shall constitute cause for the termination of all rights of the lessee to possession and occupancy of the residence and adjoining property under this section. This stipulation shall be a condition of all leases of homestead property made under this section.

(7) *Exercising the option to purchase.* (i) The lessee may exercise the option to purchase the homestead property in writing at any time prior to the expiration date of the lease. Failure to exercise the option within the lease period will terminate the lessee's rights to purchase the property.

(ii) The option price to the lessee will be the appraised market value of the residence as established by the independent appraisal set forth in paragraph (b)(5) of this section.

(iii) Any sale pursuant to the exercise of the option will be handled as a sale of collateral under the regulations set forth in § 120.204-2(c).

(c) *Disposal of Collateral.* Except as to property covered by paragraph (b) of this section real and personal property, including contracts and claims, pledged as security for a loan which is in default may be sold in accordance with the provisions of the related security instrument.

(1) *Competitive Bids or Negotiated Sale.* SBA or the Participating Lender generally shall offer acquired collateral for public sale.

Such sales, unless otherwise authorized, will be ordinarily effected through competitive bids at an auction sale or a sealed bid sale. Where property cannot be sold advantageously at auction or sealed bid sale, a negotiated sale of the property may be authorized. The right, title and interest of SBA in property sold will, unless otherwise authorized, be conveyed by an appropriate bill of sale or deed, without representation or warranty.

(2) *Lease of Acquired Property.* SBA does not favor renting or leasing acquired property or the granting of options to purchase. In those instances where the property cannot be sold advantageously and it appears to be in the interest of the Government to lease the property, proposals for a lease will be considered. Any such proposals shall provide for termination by SBA upon the giving of reasonable notice when a favorable offer to purchase is received.

(d) *Recoveries and Security Interests Shared.* All payments or recoveries on a loan as well as all reasonable expenses (including advances for the care, preservation, and maintenance of collateral securing the loan) incurred by SBA or the Participating Lender, and any security interest or guaranty (excluding SBA's guaranty) which the Participating Lender or SBA may hold or receive in connection with a loan shall be shared ratably by SBA and such Lender in accordance with their respective interests in the loan.

(e) *Guarantors.* Guarantors of Financial Assistance, other than SBA, shall have no rights of contribution against SBA on a SBA guaranteed loan. SBA shall not be deemed to be a coguarantor with any other guarantors.

[50 FR 12478, Mar. 28, 1985, as amended at 51 FR 17003, 17004, May 8, 1986]

Subpart C—Loan Participants

§ 120.300 Policy.

SBA is authorized to make in its discretion participation loans in cooperation with banks and other Financial Institutions, excluding Small Business Investment Companies licensed by SBA, through agreements to participate on an immediate or deferred (guaranty) basis. Such agreements do not obligate SBA to participate in any particular loan or loans that a Lender may submit. The existence of a participation agreement does not limit SBA's right to determine from time to time, as a matter of general policy or with respect to particular loans, the ratio between its share of a loan and the Lender's share, or SBA's right to withhold, at its sole discretion, approval of a proposed transfer of the guaranteed portion of any loan.

§ 120.301 Operation of all loan participants.

§ 120.301-1 Preferences.

No agreement to participate under the Small Business Act shall establish any preferences in favor of the Participant. "Preferences" as used in this regulation include, but are not limited to: (a) Any arrangement giving a Participating Lender a preferred position over the SBA position as regards repayment, collateral or guarantees in connection with the loan; (b) any requirement that the borrower accept a separate or companion loan which results in a preferred position for the Participant; or (c) any requirement that a borrower purchase a certificate of deposit or maintain a compensating balance which is not under the unrestricted control of the borrower. For loans made in participation with offices of the Production Credit Association see § 120.102-10(f).

§ 120.301-2 Sale or transfer of guaranteed portion.

In addition to assignments of an SBA guaranteed loan as provided in SBA Form 750 and 750B (Loan Guaranty Agreements), a Lender may transfer the entire guaranteed portion using, after February 15, 1985, only SBA Form 1086, Secondary Participation Guaranty and Certification Agreement in which the Lender and SBA agree to the repurchase of the guaranteed portion as provided in such agreement: *Provided*, That prior to the execution thereof:

(a) *Documents*. The duly executed note and settlement sheet(s) underlying the transaction, and such other documents as SBA may expressly require have been submitted by the Lender to SBA;

(b) *Fees Approved*. All fees, including fees to agents (as defined in § 103.13-2 of this chapter) paid or to be paid by the borrower in connection with the loan have been approved by SBA;

(c) *Full Disbursement*. The full amount of the loan, as authorized, has been disbursed by the Lender to the borrower;

(d) *Guaranty Fees Paid*. All guaranty fees have been paid in full; and

(e) *Terms*. The terms of sale do not obligate the Lender or SBA to repurchase under any circumstances other than those provided for in the said secondary participation agreement.

(Approved by the Office of Management and Budget under control number 3245-0185)

§ 120.301-3 Centralized registration of guaranty transfers.

When the initial sale by Lender was transacted on SBA Form 1084, the next succeeding transfer, after February 15, 1985, by holder must utilize SBA Form 1085, Request for Certification of SBA Form 1084. All transfers of a guaranteed portion after February 15, 1985, must be centrally registered with SBA's fiscal and transfer agent (FTA) and all financial transactions relative to the guaranteed portion must flow through the FTA. Updating the central registry to reflect subsequent transfers will be accomplished through the use of informaion contained on the Certificate evidencing the transfer. Execution of the secondary participation agreement by SBA shall not relieve any Lender of the obligation of compliance with all legal requirements relating to the sale or other transfer of securities, including (but not limited to) the statutes administered by the Securities and Exchange Commission and "Blue Sky" laws.

(Approved by the Office of Management and Budget under control number 3245-0195)

§ 120.301-4 Services to borrowers.

Subject to § 120.102-10, Lenders, their Associates or the designee of either may provide services to and contract for goods with any small concern only after full disbursement of the loan to the small concern or to an account not controlled by the lender, its Associate, or designee of either. Where lender or any Associate or the designee of either provides services permitted under Subpart A of this part, such srvices shall be furnished on a time basis pursuant to a written contract approved by the board of directors, partners, or proprietor of the small concern. Records of time spent and charges made for such services shall be maintained for examination by SBA. Charges made shall not exceed those charged by established professional consultants providing similar services.

(Approved by the Office of Management and Budget under control number 3245-0191)

§ 120.301-5 Advertisement of relationship with SBA.

A Lender may make reference in its advertising to its participation with SBA by the use of phrases such as "a participant with SBA in loans to small business" or "solely engaged in participation with SBA in loans to small business": *Provided, however*, That no such advertising shall state or imply that such Lender, or any of its borrowers, will enjoy preferential treatment from SBA; or be false or misleading in any other respect; and *Provided, further*, That such advertising shall not make use of SBA's seal or any facsimile thereof.

§ 120.301-6 Requirements for all participants.

A participating Financial Institution must meet all of the following requirements:

(a) *Capability*. Have a continuing capability to evaluate, process, close, disburse, and service loans authorized to be made by SBA to small business concerns. Such capability will be deemed to exist when the Financial Institution's operations are at all times conducted by persons possessing the above listed capability. The Financial Institution shall hold itself out to the public as engaged in the making of such loans, and shall maintain a reasonably accessible office in its own name, have a listed telephone number, and be open to the public during regular business hours.

(b) *Good Character and Reputation*. Have continuing good character and reputation. A Lending Institution will be deemed to possess good character and reputation if the holders, direct or indirect, of ten (10) percent or more of its voting power, and all members of its management (including managers and other key employees, officers and directors) possess, good character and reputation. Good character and reputation shall be deemed absent if any of the above mentioned is or are currently incarcerated, on parole or probation, or has or have been indicted for, formally charged with or convicted of a felony, or suffered an adverse final civil judgment in any case involving a breach of trust or the violation of a law or regulation protecting the integrity of business transactions.

(c) *Financing Subsidiaries*. Not be engaged (or planning to engage) primarily in financing the operations of an affiliate as defined in Part 121 of this chapter.

(d) *Supervision and Examination*. Be a Financial Institution subject to continuing supervision and examination by a State or Federal chartering, licensing, or similar regulatory authority as SBA may deem satisfactory, such as a State or National Bank, or a State or Federal Savings and Loan Association.

§ 120.302 Loan participants regulated by SBA.

§ 120.302-1 Small business lending companies.

Prior to January 4, 1982, SBA regulations provided that any Lending Institution which was not subject to continuing supervision and examination by State or Federal regulatory authority could be approved as a Participating Lender subject to certain conditions. Such a Lender was referred to as a "Subsection (b) Lender" and is presently known as a "Small Business Lending Company" or "SBLC". Effective January 4, 1982, SBA does not accept applications for SBLC status but existing SBLC's continue to participate with SBA and be subject to supervision and examination by SBA. In addition to the requirements set forth in § 120.301-6 (a) through (c), an SBLC shall:

(a) *Business Purposes.* Be a corporation (profit or non-profit) engaged solely in the making of loans under Section 7(a) [except Section 7(a)(13)] of the Act in participation with SBA.

(b) *Subject to SBA Supervision.* Maintain a written agreement with SBA whereby it will be subject to supervision and examination by SBA and will conduct its business operations in accordance with all applicable SBA regulations.

(c) *Capital Structure.* Have unencumbered paid-in capital and paid-in surplus of at least $500,000 or ten percent of the aggregate of its share of all outstanding loans, whichever shall be more.

(d) *Capital Impairment.* Maintain at all times an unimpaired capital. Impairment shall be deemed to exist when the retained earnings deficit exceeds fifty percent of combined paid-in capital and paid-in-surplus, excluding treasury stock. SBA shall be given prompt written notice of any capital impairment within 30 calendar days of the month-end financial report that first reflects the impairment. Until the said impairment is cured, a Lender shall not present any loans to SBA for guaranty.

(e) *Issuance of Securities.* Without prior written SBA approval, not issue any securities including stock options and debt securities, except stock dividends and common stock issued for cash or direct obligations of, or obligations fully guaranteed as to principal and interest by, the United States.

(f) *Voluntary Capital Reduction.* Without prior written SBA approval, not voluntarily reduce its capital, or purchase and hold more than two (2) percent of any class or combination of classes of its stock.

(g) *Reserves for Losses.* Maintain a reserve in the amount of anticipated losses on loans and receivables.

(h) *Maintenance of Records.* Maintain accurate and current financial records, including books of account. All financial records, minutes of meetings of stockholders, directors, executive committees, or other officials, and all documents and supporting materials relating to the said Lender's transactions shall be maintained at its principal business office, *Provided, however,* That securities held by a custodian pursuant to a written agreement shall be exempt from this requirement.

(i) *Preservation of Records.* Preserve, for the periods hereinafter specified and in a manner that permits the immediate location thereof, such documents which are the basis for financial statements required by section 120.303 (and of the accompanying independent public accountant's opinion), and shall:

(1) Preserve permanently—

(i) All general and subsidiary ledgers (or other records) reflecting asset, liability, capital stock and surplus, income, and expense accounts;

(ii) All general and special journals (or other records forming the basis for entries in such ledgers); and

(iii) The corporate charter, bylaws, application for determination of eligibility to participate with SBA, and all minutes books, capital stock certificates or stubs, stock ledgers, and stock transfer registers.

(2) Preserve for at least six years following final disposition of the related loan—

—All applications for financing;

—Lending, participation, and escrow agreements;

—Financing instruments;

–All other documents and supporting material relating to such loans, including correspondence.

Records and other documents referred to in this paragraph (i) may be preserved by reproduction: *Provided, however,* That said Lender shall cause a duplicate to be made on a current basis and stored separately from the original for the time required, and shall maintain at all times facilities for the projection and reproduction of the records.

(j) *Internal Control.* Adopt a plan designed to safeguard its funds and other assets, to assure the reliability of its personnel, and the accuracy of its financial data.

(k) *Dual Control.* Maintain dual control over disbursement of funds and withdrawal of securities. Disbursements shall be made only by means of checks or wire transfers authorized by signatures of two or more officers covered by the said Lender's fidelity bond, except that checks in an amount of $1,000 or less may be signed by one bonded officer. Two or more bonded officers, or one bonded officer and a bonded employee, shall be required to open safe deposit boxes or withdraw securities from safekeeping. The SBLC shall furnish to each depository bank, custodian, or entity providing safe deposit boxes, a certified copy of the resolution implementing the foregoing control procedures.

(l) *Fidelity Insurance.* Maintain a Brokers Blanket Bond, Standard Form 14, or Finance Companies Blanket Bond, Standard Form 15, or such other form of coverage as SBA may approve, in a minimum amount of $25,000 executed by a surety holding a certificate of authority from the Secretary of the Treasury pursuant to 6 U.S.C. 6-13.

(m) *Change of Ownership or Control.* Report any proposed change of ownership or control to SBA. Any change of ownership or control is prohibited without prior written approval of SBA. Lender shall file request for approval of any such change with the Associate Administrator for Finance and Investment, SBA, Washington, D.C. 20416. Pending such approval, Lender shall neither register the proposed new owners on its transfer books, nor permit them to participate in any manner in the conduct of the Lender's affairs. Change of ownership or control shall include:

(1) Any transfer of ten percent or more of any class of the SBLC's stock, and any agreement providing for such transfer;

(2) Any transfer that could result in the beneficial ownership by any person or group of persons acting in concert of ten (10) percent or more of any class of its stock, and any agreement providing for such transfer;

(3) Any merger, consolidation, or reorganization; or

(4) Any other transaction or agreement that in fact transfers control (as defined in § 121.3-2(a) of this chapter). If transfer of ownership or control is subject to the approval of any State or Federal chartering, licensing, or similar regulatory authority, copies of any documents filed with such authority shall, at the same time, be transmitted to the SBA District Office serving the area in which the Lender's principal office is located.

(n) *Common Control.* Not control, be controlled by or under common control with, another SBLC. Without prior written SBA approval, Lender shall not have any officer, director, or holder of ten (10) percent or more of its voting securities who is an officer, director or holder of ten percent or more of the voting securities either of another SBLC or of any entity which directly or indirectly controls or is under common control with another SBLC.

(o) *Management Services.* Employ a manager only with SBA approval. An SBLC may employ a manager or adviser or may contract for managerial or advisory services, subject to prior written approval of SBA and subject to the supervision of the board of directors. The contract shall specify the services to be rendered to the SBLC and to its applicants or borrowers.

(p) *Prohibited Financing.* Not make a loan to a small business concern which has received financing (or commitment therefore) from a small business investment company licensed by SBA which is an "Associate" of such SBLC, as defined by § 120.2-2.

(q) *Borrowed Funds.* Without SBA's prior written approval be capitalized with borrowed funds. Shareholders owning ten (10) percent or more of any class of its stock shall not use borrowed funds in purchasing such stock unless the net worth of such shareholders is at least twice the amount borrowed or unless such shareholders receives SBA's prior written approval of a lesser ratio.

(Approved by the Office of Management and Budget under control number 3245-0077)

§ 120.303 Reports to SBA by small business lending companies.

§ 120.303-1 General.

All reports required to be filed hereunder shall be transmitted to the Associate Administrator for Finance and Investment, SBA, Washington, D.C. 20416.

§ 120.303-2 Financial reports to SBA.

Within three months after the close of each fiscal year, every Small Business Lending Company shall submit an audited financial statement prepared by an independent public accountant who is approved by SBA. When requested by SBA, interim financial reports shall also be submitted.

(Approved by the Office of Management and Budget under control number 3245-0077)

§ 120.303-3 Litigation reports.

When a Small Business Lending Company becomes a party to litigation or other legal or administrative proceedings, including any action commenced by it, or by a security holder thereof in a personal or derivative capacity, against an officer, director, or employee of the SBLC for alleged breach of official duty, it shall within ten (10) days thereof file a report with SBA describing the proceedings, identity of and the SBLC's relationship to other parties involved and upon request, submit copies of the pleadings and other documents specified by SBA. Where such proceedings have been terminated by settlement or final judgment, the company shall within ten (10) days advise SBA of the terms thereof. The requirements of this paragraph are in addition to the requirements of SBA's Form 750 and 750B (Loan Guaranty Agreement).

(Approved by the Office of Management and Budget under control number 3245-0077)

§ 120.303-4 Reports to stockholders.

At the time any report is furnished to its stockholders (including any prospectus, letter, or other publication concerning the financial operations of said Lender or any of its borrowers) it shall file three copies of such report with SBA.

§ 120.303-5 Reports of changes.

A Small Business Lending Company shall, within thirty (30) calendar days of the event in question, notify SBA in writing (using an SBA Form, where appropriate) of:

(a) *Name or Address.* Any change in its name, address or telephone number;

(b) *Charter or Bylaws.* Any change in its charter or bylaws, or if its officers or directors (to be accompanied by a statement of personal history SBA, Form 912);

(c) *Capitalization.* Any changes in capitalization not otherwise required by § 120.303-1(f) to be reported to SBA; or

(d) *Continued Eligibility.* Any changes in the circumstances affecting the validity of representations on the basis of which SBA determined that the Lender was an eligible participant.

(e) *Pledge of Stock.* Whenever ten (10) percent or more of the stock is pledged by any person (or group of persons acting in concert) as collateral for indebtedness, and such pledge does not involve any transfer for which prior written approval of SBA is required under § 120.302-1(m), written notice of the terms of such transaction shall be furnished to SBA by the pledgor within thirty (30) calendar days following the date of the transaction.

(Approved by the Office of Management and Budget under control number 3245-0077)

§ 120.303-6 Miscellaneous reports.

Each Small Business Lending Company shall file with SBA such other reports as SBA may require from time to time by written directive.

(Approved by the Office of Management and Budget under control number 3245-0077)

§ 120.304 Audits of small business lending companies.

Each Small Business Lending Company is subject to periodic audits by SBA's Office of the Inspector General, Audit Division, and the cost of such audits shall be assessed against it, except for the first audit. SBA may waive audits in the case of a company whose operations have been suspended, or which is in receivership. As a general rule, SBA will not assess audit fees for special audits to obtain specific information. The fees structure for audits is based on the company's assets as of the date of the latest audited financial statement submitted to SBA before the audit. The rate table is as follows:

Total assets	Total fee	
	Base fee	Additional fee
$500,000 or less	$800	None.
$500,001 to $1,000,000	800	0.12 pct over $500,000.
$1,000,001 to $3,000,000.	1,400	0.030 pct over $1,000,000.
$3,000,001 to $5,000,000	2,000	0.016 pct over $3,000,000.
Over $5,000,000	2,320	0.006 pct over $5,000,000.

For example, an SBLC with total assets of $2,000,000 would pay an audit fee of $1700 ($1400+0.030 percent of $1,000,000). SBA may assess an additional fee of $250 per day required to complete an audit that is delayed or prolonged beyond twenty days if, in the judgment of SBA, such delay or prolongation is caused by the SBLC's failure to keep or maintain its books or records in the manner prescribed herein or by failure to cooperate in such audit.

(Approved by the Office of Management and Budget under control number 3245-0077)

§ 120.305 Suspension and revocation of eligibility to participate.

SBA reserves the right to revoke the eligibility of any Lender to participate with SBA or to suspend temporarily the eligibility of any Lender to participate with SBA, as a result of any violation of SBA regulations, any breach of any agreement with SBA, or any change of circumstance resulting in the Lender's inability to meet the operational requirements set forth herein: *Provided, however,* That such suspension or revocation shall not invalidate any guaranty previously entered into by SBA. Proceedings for such purposes will be conducted in accordance with the provisions of Part 134 of this title. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of § 134.34 of this chapter.

Subpart D—Preferred Lenders Program

§ 120.400 Objective of preferred lenders program.

The intent of Congress as expressed in 15 U.S.C. 634(b)(7) and of the regulations in this subpart is to authorize designated Lending Institutions, hereinafter called Preferred Lenders, to undertake loan processing, servicing, collection and liquidation functions and responsibilities with respect to SBA guaranteed loans without obtaining prior SBA approval ("the Program"). Each Preferred Lender has the right to consult with and obtain guidance at any time from SBA with respect to any loan in the Program.

§ 120.401 Definitions as used in this subpart.

(a) "Act" means the Small Business Act, 15 U.S.C. 631 et seq.

(b) "Administrator" means the Administrator of SBA.

(c) "Preferred Lender" means a small business lending company or a Lending Institution which is subject to continuing supervision and examination by a State or Federal chartering, licensing, or similar regulatory authority satisfactory to SBA, which has met the eligibility requirements prescribed in this Subpart, and which has executed with SBA the Program participation agreement.

(d) "Program" or "PLP" means the Preferred Lenders Program.

(e) "SBA" means the Small Business Administration.

(f) "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the Territories and possessions of the United States.

§ 120.402 Eligibility of preferred lender.

§ 120.402-1 Procedure.

An SBA branch or district office serving the area where the principal office of the Lending Institution is located shall initiate the process designating Lender as a Preferred Lender. It shall make any such recommendation of designation to its supervisory SBA Regional Office which together with its recommendation, shall submit the documentation to the Associate Administrator for Finance and Investment (or designee) for decision. The determination of such Associate Administrator shall be final on whether a lending institution shall be a Preferred Lender.

§ 120.402-2 Factors which SBA shall consider in determining eligibility.

In making the determination of whether a Lending Institution shall be a Preferred Lender, SBA shall consider, but is not limited to, the following factors:

(a) The Lending Institution must have been an active participant in the SBA Certified Lenders Program for at least the twelve consecutive months immediately prior to the SBA field office's initial recommendation.

(b) The Lending Institution must have demonstrated that it has the consistant ability to develop complete and well analyzed loan packages. This factor can be demonstrated by the lack of any negative comments in the file by SBA loan officers familiar with Lender, the inclusion of only a minimal amount of adverse load officer comment in relation to the volume of loans processed by this Lender, or the inclusion of favorable comments by SBA loan officers. If the Lender is a Small Business Lending Company subject to supervision and examination by SBA, this factor may be met by minimal adverse comments by SBA examiners in their reports.

(c) The Lending Institution must have demonstrated a satisfactory history of participation with SBA, which can be shown, among other ways, by a repurchase rate acceptable to SBA.

(d) The Lending Institution, before it can operate as a Preferred Lender, must execute SBA Form 1347, "Supplemental Loan Guaranty Agreement."

(Approved by the Office of Management and Budget under control number 3245-0190)

§ 120.403 Characteristics of PLP loans.

§ 120.403-1 Amount of PLP loan and of maximum guaranteed portion.

The amount of a loan under this program may be any amount so long as the amount of the guaranteed portion shall not exceed the statutory ceiling of $750,000.

[51 FR 18437, May 20, 1986, as amended at 53 FR 35459, Sept. 14, 1988]

§ 120.403-2 Maximum percentage of PLP loan to be guaranteed.

SBA shall not guarantee more than 75% of any loan approved under this program.

§ 120.403-3 Credit allocation.

SBA shall provide each Preferred Lender with a periodic allocation of credit which shall be its maximum authority to make program loans for the period designated in such allocation. The Preferred Lender's allocation of credit authority shall be increased only by written permission of SBA and shall not be restored automatically by payments received on SBA loans. Loans made in excess of the allocation do not qualify under this program but may be submitted for guaranty to SBA using regular (non-PLP) procedures.

§ 120.403-4 Loan processing.

Each Preferred Lender shall be responsible for all decisions relating to eligibility (including but not limited to size), creditworthiness, loan closing and compliance with all legal requirements of law or SBA regulations as they apply to non-PLP loans. Evidence of a PLP loan shall be on SBA Form 4-I (Lender's Application for Guaranty or Participation) stating the guaranteed percentage and signed by two authorized representatives of the Preferred Lender and submitted to SBA immediately after approval.

(Approved by the Office of Management and Budget under control number 3245-0016)

§ 120.403-5 Interest rates.

A Preferred Lender has the option of applying, on a loan to loan basis, a fixed or variable rate of interest.

(a) *Fixed Interest Rate.* If the Preferred Lender uses a fixed rate of interest in this program, such rate shall not exceed the maximum rate authorized by the State laws applicable to the particular loan.

(b) *Variable rate loans.* If the Preferred Lender uses a variable interest rate, the base rate shall be either of the rates defined in section 122.8-4, and the rate may fluctuate no more frequently than the first business day of each month starting with the month following initial disbursement. If the Preferred Lender is a member of the Federal Reserve System, it may use its own prime rate, and the interest rate may fluctuate on daily basis starting no sooner than the first business day of the month following initial disbursement. The maximum allowable interest rate shall be governed by local laws applicable to the particular loan.

§ 120.403-6 Fees.

(a) *Servicing Fee on Loan Sold in Secondary Market.* If the Preferred Lender sells the guaranteed portion of a loan made under the program within six months following full disbursement, such transfer shall be at a price which will not result in a differential greater than three percentage points (three hundred basis points) between the interest rate paid by the borrower and the interest rate received by the purchaser-investor.

(b) *Fees in General.* SBA regulations in this Part relating to any fees which may be charged to a borrower shall apply to any loan made under this program. This includes, by way of example and without limitation, the rules relating to borrower's fees for services including the payment of legal, brokerage or bonus fees.

§ 120.403-7 Limitations on preferred lender's authority prohibition on reducing lender's exposure; SBA access.

(a) Every Preferred Lender, in making loans under this program, shall be bound by the basic principles governing the granting and denial of applications for Financial Assistance as contained in Parts 120 and 122 of this chapter which may be changed from time to time. This includes the description contained therein of business concerns which are not eligible for SBA Financial Assistance.

(b) A Preferred Lender shall not use the PLP procedure to reduce its existing credit exposure for any borrower.

(c) Every Preferred Lender shall allow SBA authorized representatives, during normal business hours, to have access to its files to review, inspect and copy all records and documents relating to SBA borrowers.

(Approved by the Office of Management and Budget under control number 3245-0190)

§ 120.404 Loan servicing.

§ 120.404-1 Standard.

Each Preferred Lender shall service its SBA guaranteed loan portfolio using generally accepted commercial banking standards of loan servicing employed by prudent lenders, and shall not use lower standards for such loans compared to others, if any.

§ 120.404-2 Servicing actions.

Notwithstanding § 120.201-1, a Preferred Lender may take any servicing action it deems necessary for any loan approved under the Preferred Lenders Program: *Provided,* That the action does not confer a preference on the Lender.

§ 120.404-3 Limitation.

A PLP lender shall not accept a compromise settlement.

§ 120.405 Loan liquidation.

§ 120.405-1 Scope.

Each Preferred Lender shall liquidate any loan which it has made under PLP procedures unless SBA advises the lender in writing that SBA will liquidate such loan. The Preferred Lender has authority to make the decision required by § 120.204 with respect to any loan made under this program.

§ 120.405-2 Standard and requirements.

A Preferred Lender shall submit a liquidation plan to SBA. Such plan should generally describe the course of action and provide cost estimates. SBA may require the Lender to make such changes to the liquidation plan as SBA determines are necessary. Any liquidation by a Preferred Lender must be executed and completed in a commercially reasonable manner.

§ 120.405-3 Final accounting report.

Upon completion of a liquidation under this program, the Preferred Lender shall transmit to SBA a certified accounting of receipts and disbursements.

(Approved by the Office of Management and Budget under control number 3245-0190)

§ 120.405-4 Post audit.

SBA reserves the right to conduct a post liquidation audit of any liquidation of a PLP loan by a Preferred Lender.

(Approved by the Office of Management and Budget under control number 3245-0190)

§ 120.406 Suspension or revocation of preferred lender status.

SBA reserves the right to suspend or revoke the eligibility of a Preferred Lender by providing written notice at least 10 business days prior to the effective date of the suspension or revocation. Reasons for such revocation or suspension include a repurchase rate unacceptable to SBA, violations of applicable statutes, regulations or SBA policy and procedures as published from time to time, and contained in SBA Form 1347, see § 120.402-2(d) of this part. Procedures for appealing these decisions are found in Part 134 of this chapter.

Subpart E—[Reserved]

Subpart F—Central Registration for Secondary Markets

§ 120.601 Statutory provisions.

The statutory authority for this Subpart F is section 5(h) of the Small Business Act [15 U.S.C. 634(h)], as amended by Pub. L. 98-352, approved July 9, 1984.

§ 120.602 Definitions.

(a) *Act* means the Small Business Act, 15 U.S.C. 631, *et seq.*

(b) *Certificate* means the document:

(1) Representing a beneficial fractional interest in a pool consisting of the SBA guaranteed portions of loans or

(2) Representing the guaranteed portion of an SBA loan which is not sold into a pool.

(c) *FTA* means the SBA's fiscal and transfer agent.

(d) *Secondary Market* means the process by which the SBA guaranteed portions of loans made by lending institutions are purchased and sold.

§ 120.603 Fiscal and transfer agent.

The FTA, as authorized by law, is SBA's agent in carrying out the central registration of (a) the SBA guaranteed portions of loans sold in the secondary market and (b) certificates representing fractional interests in pools composed solely of the SBA guaranteed portions of loans. The FTA also has the responsibility for issuing, on behalf of SBA, the certificates representing such interests.

§ 120.604 Registration.

§ 120.604-1 Applicability of registration function.

The rules and requirements in this subpart relating to registration shall apply to:

(a) Every Guaranteed portion of a loan sold in the secondary market commencing with the initial sale by the lender which made the loan; and

(b) Every certificate representing a fractional or undivided interest in a pool approved by the SBA and composed solely of the SBA guaranteed portions of loans.

§ 120.604-2 Central registration.

The FTA shall register each guaranteed portion and each pool certificate sold pursuant to section 5 (f) and (g) of the Act. Such registration shall include, with respect to each sale the following:

(a) Identity of the lender which made the loan and which sold the loan;

(b) Interest rate paid by the borrower to the lender, and whether the rate is fixed or variable;

(c) Lender's servicing fee;

(d) Identity of the purchaser;

(e) Price paid by the purchaser;

(f) Interest rate paid on the guaranteed portion or the certificate, as applicable;

(g) Fees which the FTA is charging for these registration duties and for the issuance of certificates to facilitate pooling; and

(h) Such other information as SBA shall determine.

This information shall be available from the FTA upon request of the purchaser of a guaranteed portion or of a certificate.

(Approved by the Office of Management and Budget under control number 3245-0185)

§ 120.605 Certificates.

§ 120.605-1 Transferability.

Except as indicated below in § 120.605-2, certificates issued by the FTA shall be freely transferable. Transfers shall be carried out pursuant to and in accordance with Article 8 of the Uniform Commercial Code of the State of New York. A form of assignment on the back of each certificate shall be used to transfer the certificate, unless the parties choose to use another form acceptable to FTA. The FTA may refuse to issue a certificate until the documents of transfer are correct and complete. Each certificate presented to the FTA for transfer must be accompanied by a letter of transmittal which shall include the following information: pool number, if applicable; certificate number; exact spelling of name in which new certificate is to be issued; complete address and tax identification number of the new holder; name and telephone number of person handling the transfer; complete instructions for the delivery of the new certificate. Together with such letter there shall be sent the appropriate fee which may be charged by the FTA.

[50 FR 12478, Mar. 28, 1985, as amended at 53 FR 7345, Mar. 8, 1988]

§ 120.605-2 Violation of secondary market rules and regulations.

SBA reserves the right to suspend or revoke the privilege of a lender, broker, dealer or registered holder to sell, purchase, broker, or deal in loans, loan certificates or loan pool certificates if such lender, broker, dealer or registered holder:

(a) Commits a significant violation, as determined by SBA, of the Rules and Regulations of the Secondary Market (Subparts F, G and H of this Part);

(b) Commits a significant violation, as determined by SBA, of any of the provisions of the contracts entered into by the parties, including, but not limited to, Standard Forms 1085, 1086, 1088 and 1454; or

(c) Knowingly submits false or fraudulent information in support of its participation in the SBA Secondary Market to SBA or the FTA. SBA shall provide written notice of such determination at least 10 business days prior to the effective date of such determination. Such notice shall inform the lender, broker, dealer, or registered holder of the opportunity for a hearing pursuant to Part 134 of this chapter. During the period of any proceedings under Part 134 the action of the SBA shall remain in effect.

[53 FR 7345, Mar. 8, 1988]

§ 120.605-3 Claim on account of loss, theft, destruction, mutilation or defacement of certificate.

(a) *General.* To obtain a replacement certificate on account of loss, theft, destruction, mutilation or defacement of a certificate, the holder must provide the FTA with complete identification of the certificate and the pertinent facts relating to the situation reported. In addition, the holder must file a bond of indemnity in such form and with such surety, sureties or security as may be required by the FTA to protect the interest of SBA and the FTA. Copies of the form of bond are available from the FTA. The FTA may charge a fee for each replacement certificate.

(1) *Loss or Theft.* Report of the loss or theft of a certificate must be made promptly to the FTA in the form of an affidavit of loss. Copies of the form of affidavit are available from the FTA. The report shall include:

(i) The name and address of the registered owner. If the report is made by any other person or entity, the capacity in which he/she or it represents the owner must be reported;

(ii) The identification of the certificate by pool number, if applicable; certificate number; original principal amount, and the exact form in which the certificate was registered and a full description of any assignment, endorsement or any other writing therein;

(iii) A statement of the circumstances surrounding the theft or loss.

Upon receiving notification of loss or theft, the FTA will stop transfer of the certificate for up to 60 days to allow the registered holder to obtain the required bond of indemnity and any other documentation. The FTA will extend the stop for up to an additional 60 days if subsequently requested.

(b) *Destruction, Mutilation or Defacement.* If a certificate is destroyed, or becomes so mutilated or defaced as to impair its value to owner, a report as outlined in subsection (a)(1) of this section shall be made to the FTA. All available portions of the mutilated or defaced certificates also must be submitted. The FTA then will arrange for the preparation of a replacement certificate.

[50 FR 12478, Mar. 28, 1985. Redesignated at 53 FR 7345, Mar. 8, 1988]

Subpart G—Pooling of SBA Guaranteed Portion

SOURCE: 50 FR 12232, Mar. 28, 1985, unless otherwise noted.

§ 120.700 Statutory provisions.

The statutory authority for this Subpart G is section 5(g) of the Small Business Act (15 U.S.C. 634(g)).

§ 120.701 General.

The SBA shall guarantee to registered holders, upon such terms and conditions as it may deem appropriate, the timely payment of principal of and interest on certificates which are based on and backed by a pool composed solely of the entire SBA guaranteed portions of loans which are made by private lenders. SBA's guaranty of the certificates is backed by the full faith and credit of the United States. Transactions involving the sale of interests in pools are governed by the specified terms and provisions of these regulations, SBA's Secondary Market Program Guide and contracts entered into by the parties. These transactions and those described in Subpart H of these regulations constitute the SBA secondary market. Procedural rules dealing with central registration for the secondary market may be found at Subpart F of this part and § 120.301-2-3. Further information regarding the SBA Secondary Market may be obtained from the Small Business Administration, Room 800, 1441 L Street, NW., Washington, D.C. 20416.

§ 120.702 Definitions.

(a) *Agency* or *SBA* means the Small Business Administration.

(b) *Certificate* means the document representing a beneficial interest in a pool consisting solely of the SBA guaranteed portions of loans.

(c) *Current status* means a loan repayment category in which no payments from borrower to lender on a loan are more than 29 days overdue as measured from the due date of the payment, and as evidenced on the records of the central registry maintained by the FTA.

(d) *FTA* means SBA's fiscal and transfer agent.

(e) *Payment date* means the date that checks are deposited in the U.S. mail by the FTA. Such date shall be the 25th of the month or the next business day thereafter if the 25th is not a business day, or such other date as may be chosen from time to time by SBA and published by notice in the FEDERAL REGISTER.

(f) *Pool Assembler* means a national or state bank or savings and loan association, life insurance company, broker-dealer, small business lending company, or similar institution, which meets the requirements set forth in § 120.703 of this subpart. This entity, whether or not it is the SBA participating lender which made the loan, arranges and organizes the pool by acquiring the guaranteed portions of loans that are in accordance with the requirements of subpart H and directs the FTA to issue the certificates.

(g) *Registered Holder* or *Holder* means the certificate owner whose identity is maintained on the books of the FTA.

(h) *Note Rate* means the stated rate of interest on the note SBA Form 147.

(i) *Net Rate* means the rate of interest on an individual guaranteed portion in a pool.

(j) *Pool Rate* means the stated rate of interest on a pool certificate.

[50 FR 12232, Mar. 28, 1985; 50 FR 49832, Dec. 5, 1985]

§ 120.703 Eligible pool assemblers.

(a) *File Application.* In order to qualify as a pool assembler, an entity must file an application with SBA (OMB Approval No. 3245-0123), along with an application fee, and certify that it:

(1) Is regulated by the appropriate regulatory agency as defined in section 3(a)(34)(G) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)(G));

(2) Has a net worth in accordance with the requirements of the appropriate regulatory authority;

(3) Has the financial capability to assemble acceptable and eligible guaranteed portions in sufficient quantity to support the required minimum issuances of pool certificates; and

(4) Is in good standing with SBA as determined by the SBA Associate Administrator for finance and Investment and with any state or Federal regulatory body governing the entity's activities or with NASD, if it is a member.

(b) *Approval.* Only after its application has been approved by SBA may an entity submit pool applications to the FTA.

(c) *Conduct of Business.* An entity shall continue to qualify as an eligible pool assembler only so long as it (1) meets the eligibility standards of paragraph (a) of this section; (2) conducts its business operations in accordance with accepted securities or banking industry practices, ethics, and standards and applicable SBA regulations; and (3) maintains its books and records in accordance with generally accepted accounting principles or in accordance with the guidelines promulgated by the regulatory body governing its activities.

[50 FR 12232, Mar. 28, 1985, as amended at 53 FR 7345, Mar. 8, 1988]

§ 120.704 Suspension or termination of eligibility of pool assembler.

(a) *Suspension.* If a pool assembler (including principals thereof) should fail to comply with any of the requirements prescribed in § 120.703 (a) and (c) of this subpart, or has been indicted or otherwise formally charged with, or convicted of, a misdemeanor or felony or suffered an adverse final civil judgment that such pool assembler has committed a breach of trust or a violation of a law or regulation protecting the integrity of business transactions or relationships, the Agency may suspend such entity's eligibility to participate as a pool assembler and decline to issue additional certificates for not more than twelve (12) months, which period may be extended for six (6) additional months as may be necessary. The Agency shall notify the entity by certified mail, return receipt requested, of its suspension and the reasons therefore. Upon receipt of the notice of suspension, the pool assembler may file a petition for review of such action in accordance with the procedures in Part 134 of these regulations.

(b) *Termination.* If a pool assembler (including principals thereof) should fail to comply with any of the requirements prescribed in 120.703 (a) and (c) of this subpart, or has been convicted of a misdemeanor or felony or suffered an adverse final civil judgment that such pool assembler has committed a breach of trust or a violation of a law or regulation protecting the integrity of business transactions or relationships, the Agency may terminate such entity's eligibility to participate as a pool assembler. Proceedings to terminate a pool assembler's right to participate in the secondary market shall be initiated by the issuance of an order to show cause why its participation in the secondary market should not be terminated. That order to show cause shall be issued and any administrative proceedings in connection therewith shall be conducted in accordance with the procedures in Part 134 of these regulations.

§ 120.705 Suspension or revocation of broker or dealer.

(a) In addition to the provisions of § 120.605-2, SBA may exclude any broker or dealer from selling or otherwise dealing in certificates:

(1) If such broker's or dealer's authority to engage in the securities business has been revoked or suspended by a supervisory agency. When such authority has been so suspended, such broker or dealer will be suspended by SBA for the duration of such suspension by the supervisory agency.

(2) If such broker or dealer has been indicted or otherwise formally charged with a misdemeanor or felony bearing on its fitness to participate in the market for certificates, such broker or dealer may be suspended while the charge is pending. Upon conviction, participation may be terminated.

(3) When such broker or dealer has suffered an adverse final civil judgment, holding that such broker or dealer has committed a breach of trust or violation of law or regulation protecting the integrity of business transactions or relationships, participation in the market for certificates may be terminated.

(b) SBA may, for any of the reasons stated above, suspend or revoke the privilege of any broker or dealer to participate in this market. SBA shall give written notice at least ten (10) business days prior to the effective date of such action. Such notice shall inform the broker or dealer of the opportunity for a hearing pursuant to Part 134 of this chapter.

(c) Procedures for appealing the decision to suspend or revoke are found in Part 134 of this chapter. During the period of any proceedings under Part 134 the action of the SBA shall remain in effect.

[53 FR 7345, Mar. 8, 1988]

§ 120.706 Certificates.

(a) *General Certificate Characteristics.* All certificates to be issued pursuant to this subpart shall be in registered form only. Each certificate shall have terms acceptable to SBA and shall specify its principal amount, interest rate, the maturity date, and the date payments are to be made to the holders. The certificates may include call provisions and other characteristics depending on market conditions.

(b) *Pool Certificate Payment Characteristics.* Each certificate shall provide for payment on payment date of both principal installments and interest installments calculated on a fixed or variable rate of interest on the unpaid principal balance of the portion of the pool the certificate represents. These provisions shall be effective whether or not the payments on the loans which underlie the pool are collected. All prepayments on such loans will be passed through to the holder(s) as appropriate, on payment date. In the case of non-payment by the borrower on a loan in a pool backing the certificates, SBA through its FTA shall make advances to maintain the schedule of interest and principal payments to the registered holders until SBA purchases the guaranteed portion. Guarantee purchases are discussed in § 120.212 of this part and in SBA Form 1086, Secondary Participation Guaranty and Certification Agreement.

[50 FR 12232, Mar. 28, 1985. Redesignated at 53 FR 7345, Mar. 8, 1988]

§ 120.707 Loan pools.

(a) *Pool Characteristics.* Every pool, at its outset, must include a minimum number of guaranteed portions of loans with a minimum aggregate principal balance outstanding of such guaranteed portions at the time of certificate issuance. Any individual guaranteed portion may not constitute more than a certain maximum percentage of the pool. The minimum number of guaranteed portions of loans in a pool, the aggregate principal balance and the percentage of pool make up all may be altered from time to time by SBA by publication of a notice in the FEDERAL REGISTER. The required characteristics will be based on an analysis of program experience and market conditions by SBA. After such analysis, SBA will make appropriate adjustments to pool characteristics.

(b) *Amount of Certificate.* The face amount of any certificate representing an interest in a pool cannot be less han specified minimum amount and, with the exception of one certificate er pool, must be in increments speciied by SBA. These requirements may e altered by SBA by publication of a otice in the FEDERAL REGISTER after SBA has analyzed market conditions nd program experience.

(c) *Transferability.* Each certificate hall be transferable, but only on the ooks and records of SBA or its FTA rovided that a lender may not be a older of any certificate in any pool ontaining guaranteed portions generted by that lender. The share of the roceeds collected on account of the ool may not be payable to more than ne registered holder with respect to ny certificate.

(d) *Period of Interest Guaranteed.* nterest on prepaid or defaulted loans hall accrue and be guaranteed by BA only through the date of prepay- ent or payment on the guaranty.

(e) *Maximum Allowable Difference Interest Rates.* From time to time BA may, by notice, publish in the EDERAL REGISTER the maximum allow- le difference between the highest te rate and the lowest note rate for loans in a pool. The maximum al- wable difference in interest rates ll be determined by SBA based on ogram experience and an analysis of arket conditions.

(f) *Maximum Allowable Difference in Terms to Maturity.* From time to time SBA may publish by notice in the FEDERAL REGISTER the maximum allowable difference between the remaining terms to maturity of all loans constituting the pool. The maximum allowable difference selected by SBA will be based on program experience and an analysis of market conditions.

(g) *Pool Rate.* The rate on a pool certificate must be equal to the lowest net rate on any individual guaranteed portion in the pool.

(h) *Redemption.* During the term of a certificate, it may be called for redemption due to prepayment or default of all loans constituting the pool.

[50 FR 12232, Mar. 28, 1985. Redesignated at 53 FR 7345, Mar. 8, 1988]

§ 120.708 Delivery requirements.

Before FTA issues any certificate, the pool assembler shall deliver to the FTA the following documents (OMB Approval No. 3245 0213):

(a) A properly completed pool application form;

(b) Either (1) certificates evidencing the guaranteed portions comprising the pool or (2) appropriate documentation evidencing ownership of the guaranteed interests, certification that each of the loans has been closed in conformity with the SBA authorization, and copies of the notes representing the loans whose guaranteed portions are to be part of the pool, and

(c) Such other documentation as may be required by SBA.

[50 FR 12232, Mar. 28, 1985. Redesignated at 53 FR 7345, Mar. 8, 1988]

§ 120.709 Pool administration.

(a) *FTA Responsibility.* Administration of each pool shall be the responsibility of the FTA, which shall maintain a registry of owners and such other information as SBA shall determine.

(b) *Self Liquidating.* Each pool shall be self-liquidating as the result of borrower payments, redemption by SBA, prepayment by borrower, and/or payment by SBA or the lender because of default by borrower. Substitution of the guaranteed portions of existing loans for defaulted loans is not permitted.

(c) *Subrogation by SBA.* If SBA pays a claim under a guarantee with respect to a certificate issued pursuant to this subpart, it shall be subrogated fully to the rights satisfied by such payment.

(d) *SBA Ownership Rights.* No State, local, or Federal law, shall preclude or limit the exercise by the SBA of its ownership right in the portions of loans constituting the pool against which the certificates are issued.

[50 FR 12232, Mar. 28, 1985. Redesignated at 53 FR 7345, Mar. 8, 1988]

§ 120.710 Eligible loans for pools.

(a) Certificates issued under these provisions must be based on and backed by the SBA guaranteed portion of loans under arrangements satisfactory to SBA. Each loan must:

(1) Be in a current status as of the date of pool formation;

(2) Be guaranteed under the Small Business Act, as amended (except that loans guaranteed under section 7(a)(13) of the Small Business Act (relating to development companies) are not eligible for this program);

(3) Have such characteristics as SBA shall from time to time determine to be necessary for the successful operation of the pooling program.

(b) With respect to any particular pool, the loans must meet only such standards as may be in effect at the time of issuance.

[50 FR 12232, Mar. 28, 1985. Redesignated at 53 FR 7345, Mar. 8, 1988]

§ 120.711 Guaranty.

With respect to each pool certificate, SBA guarantees the timely payment on payment date, whether or not collected, of interest and principal installments, and any prepayments or other early recoveries of principal on the loans, as undertaken in the Agency's guaranty appearing on the face of the certificate.

[50 FR 12232, Mar. 28, 1985. Redesignated at 53 FR 7345, Mar. 8, 1988]

§ 120.712 Fees.

The FTA is authorized to collect reasonable application fees, transfer fees and such other fees as the SBA and the FTA may negotiate under contract and which the Agency, from time to time, will publish in the FEDERAL REGISTER. In negotiating any changes in fees, the Agency will accept public comments on these notices and consider these comments in establishing these fees.

[50 FR 12232, Mar. 28, 1985. Redesignated at 53 FR 7345, Mar. 8, 1988]

§ 120.713 Disclosure requirements.

Prior to any sale, the pool assembler or any subsequent seller of a certificate must disclose to the purchaser, either orally or in writing, information on the terms, conditions and yield as described in the Secondary Market Program Guide. In addition, such information must be provided in writing on the transfer document at the time it is submitted to the FTA. The FTA will, subsequent to the sale, provide such disclosure information in writing to the purchaser. If all or part of a pool certificate is placed into or used as the backing for a trust, investment pool, mutual fund or any other security, this same disclosure information must be provided to investors through the prospectus and any promotional material.

[53 FR 7345, Mar. 8, 1988]

Subpart H—Individual SBA Guaranteed Portion Sold in the Secondary Market

SOURCE: 50 FR 12234, Mar. 28, 1985, unless otherwise noted.

§ 120.800 Statutory provisions.

The statutory authority for this Subpart H is section 5(f) of the Small Business Act (15 U.S.C. 634(f)).

§ 120.801 General.

(a) SBA guarantees to purchase from the registered holder the guaranteed portion for an amount equal to the guaranteed percentage of unpaid principal and accrued interest due on the note as of the date of purchase by SBA, less deductions for the lender's and the FTA's servicing fees. SBA's guarantee to the registered holder shall become effective in the event: (1)

The borrower defaults in making payments of principal or interest due on the note; or (2) the lender fails to remit to the FTA payments received from the borrower. SBA also guarantees to forward to the registered holder any such payments that the FTA fails to remit to the registered holder. SBA's guarantee to such holder is unconditional and is backed by the full faith and credit of the United States. (SBA does not guarantee timely payment on individual guaranteed portions. *cf.* § 120.701) Transactions involving the sale of individual guaranteed portions are governed by the specified terms and provisions of the contracts entered into by the parties, SBA's Secondary Market Program Guide, and these regulations.

(b) These transactions and those described in Subpart G of these regulations constitute the SBA secondary market. Procedural rules dealing with central registration for the secondary market may be found at Subpart F of this part and § 120.301-2-3. Further information may be obtained from the Small Business Administration, Room 800, 1441 L Street, NW., Washington, D.C. 20416.

§ 120.802 Definitions.

The definitions of the terms "Agency or SBA," "Certificate," "FTA," "Payment Date" and "Registered Holder or Holder" have the same meaning in this subpart as they do in Subpart G.

(a) *Certificate* means the document representing a beneficial interest in the guaranteed portion of a loan made by a lender and guaranteed by SBA.

(b) *Current status* means a loan repayment category in which no payments on a loan are more than 29 days overdue as measured from the due date of the payment, as evidenced on the records of the entity servicing such loan.

§ 120.803 Certificates.

(a) *Certificate Characteristics.* All certificates to be issued pursuant to tnis subpart shall be in registered form only. Each certificate shall have terms acceptable to SBA and shall specify its principal amount, interest rate and the maturity date.

(b) *Payment Characteristics for Certificates Representing Individual Guaranteed Loans.* Each certificate shall represent a holder's undivided interest in an entire SBA guaranteed portion of a loan providing for a pass through to the holder of payments received by the FTA from the lender or any entity servicing the loans.

§ 120.804 Individual sale.

(a) *Amount of Certificate.* Each certificate representing the guaranteed portion of a single loan shall be for the entire amount of the guaranteed portion.

(b) *Transferability.* Each such certificate shall be transferable only on the books and records of SBA or its FTA, except that the lender (or its associate as defined in § 120.2-2) which made the loan shall not purchase the guaranteed portion in the secondary market. If a lender purchases the guaranteed portion of one of its own loans, it will have the same status for the particular loan as it is accorded in the Loan Guaranty Agreement, SBA Form 750.

(c) *Prepayment or Default.* The prepayment of the underlying loan or a default on such loan will cause the certificate to be redeemed in accordance with procedures prescribed in the SBA Form 1086.

§ 120.805 Delivery requirements.

(a) Before FTA issues the initial certificate for a particular guaranteed portion, the original seller shall provide the following documents:

(1) Appropriate documentation evidencing ownership of the guaranteed interest, including a certification by the lender that the loan has been closed in conformity with the SBA authorization;

(2) A copy of the note representing the guaranteed loan; and

(3) Such other documentation as may be required by SBA.

(b) SBA reserves the right to review or require its Agent to review such documentation prior to certificate issuance. However, SBA shall not review any materials previously approved if the lender has certified that the loan has been properly closed and that the lender has substantially complied with the provisions of the guarantee agreement and the SBA regulations.

§ 120.806 Secondary market administration.

(a) *FTA Responsibility.* Administration of each individual guaranteed portion shall be the responsibility of the FTA which shall maintain a registry of owners and such other information as SBA shall determine.

(b) *Self Liquidating.* Each individual guaranteed portion shall be self-liquidating as the result of borrower payments, redemption by SBA, prepayment by borrower and/or payment by SBA because of the default by borrower.

(c) *Subrogation by SBA.* If SBA pays a claim under a guarantee with respect to a certificate issued pursuant to this subpart, it shall be subrogated fully to the rights satisfied by such payment.

§ 120.807 Eligible loans for the secondary market.

Certificates issued under these provisions must be based on and backed by the SBA guaranteed portion of loans under arrangements satisfactory to SBA. Each loan must:

(a) Be in a current status at the time it is initially sold into the secondary market;

(b) Be guaranteed under the Small Business Act, as amended;

(c) Have such characteristics as SBA shall, from time to time, determine to be necessary for the successful operation of the secondary market.

§ 120.808 Fees.

The FTA is authorized to collect reasonable application fees, transfer fees and such other fees as the SBA and the FTA may negotiate under contract and which the Agency, from time to time, will publish in the FEDERAL REGISTER. In negotiating any changes in fees, the Agency will accept public comments on these notices and consider these comments in establishing these fees.

§ 120.809 Disclosure requirements.

Every registered holder of the guaranteed portion must, prior to any sale, disclose to the purchaser either orally or in writing the terms and conditions and yield of such instrument as described in the Secondary Market Program Guide. In addition, such information must be provided in writing on the transfer document at the time it is submitted to the FTA. The FTA will, subsequent to sale, provide such disclosure information in writing to the purchaser. If all or part of a certificate is placed into or used as the backing for a trust, investment pool, mutual fund or any other security, this same disclosure information must be provided to investors through the prospectus and any promotional material.

[53 FR 7346, Mar. 8, 1988]

§ 120.810 Suspension or revocation of broker or dealer.

(a) In addition to the provisions of § 120.605-2, SBA may suspend or revoke any broker or dealer from selling or otherwise dealing in certificates:

(1) If such broker's or dealer's authority to engage in the securities business has been revoked or suspended by a supervisory agency. When such authority has been so suspended, such broker or dealer will be suspended by SBA for the duration of such suspension by the supervisory agency.

(2) If such broker or dealer has been indicted or otherwise formally charged with a misdemeanor or felony bearing on its fitness to participate in the market for certificates, such broker or dealer may be suspended while the charge is pending. Upon conviction, participation may be terminated.

(3) When such broker or dealer has suffered an adverse final civil judgment, holding that such broker or dealer has committed a breach of trust or violation of law or regulation protecting the integrity of business transactions or relationships, participation in the market for certificates may be terminated.

(b) SBA may, for any of the reasons stated above, suspend or revoke the privilege of any broker or dealer to participate in this market. SBA shall give written notice at least ten (10) business days prior to the effective date of such suspension or revocation. Such notice shall inform the broker or dealer of the opportunity for a hearing pursuant to Part 134 of this chapter.

(c) Procedures for appealing the decision to suspend or revoke are found in Part 134 of this chapter. During the period of any proceedings under Part 134 the action of the SBA shall remain in effect.

[53 FR 7346, Mar. 8, 1988]

APPENDIX A—MEMORANDUM OF UNDERSTANDING BETWEEN THE SMALL BUSINESS ADMINISTRATION AND THE UNITED STATES DEPARTMENT OF AGRICULTURE, FARMERS HOME ADMINISTRATION

Preamble

Pub. L. 94-305, which amended the Small Business Act, authorized the Small Business Administration (SBA) to assist small businesses engaged in farming and related activities under its existing programs. The legislation did not create any new SBA loan programs but merely included the agricultural industries among the industries eligible for SBA assistance. Neither did the legislation diminish, in any way, the responsibility of the Farmers Home Administration (FmHA) to meet the financial and other needs of farmers.

The joint memorandum reaffirms the mutual desire of SBA and FmHA to cooperate in the use of their respective loan making authorities to complement the activities of each other and, to the extent possible, to improve and expand the delivery of financial assistance to the agricultural production segment of the country; all with the least possible degree of overlapping, confusing or duplicating activities.

1. The FmHA administers its financial assistance programs through its State, District and County offices.

The SBA administers its financial assistance programs through its Regional, District and Branch offices.

FmHA State Directors and SBA District Directors will exchange addresses of their offices and identify the geographical areas served by each. This information will be available in all field offices of both agencies so applicants can be referred to the appropriate offices. These same officials will make arrangements to inform the personnel within their jurisdictions of the other agency's current loan making and servicing policy so the referral advice given to potential applicants will be as accurate as possible.

2. FmHA and SBA will establish a liaison at both the State Director/District Director level and the National level and periodically coordinate their activities to: (a) Exchange detailed information concerning loan programs; (b) define areas of cooperation between the two agencies; (c) assure that their programs are servicing the intended recipients; (d) establish new methods to serve the public more expeditiously; and (e) achieve maximum utilization of their respective resources.

The SBA and the FmHA agree that the interests of agricultural industries will be best served and that each agency will achieve better utilization of available resources through the following operating guidelines:

3. Potential applicants may contact either agency for an interview but may file an application with only one agency at a time. However, SBA will encourage those potential applicants that have been or are borrowing through the FmHA to continue their relationship with that agency.

4. Potential applicants meeting FmHA eligibility requirements will, at the time of initial interview, be advised by SBA to contact the appropriate FmHA County Office for assistance.

FmHA personnel will, at the time of initial interview, refer potential applicants who are not eligible for FmHA assistance, (such as corporations, partnerships or aliens, applying for certain loans) to SBA if they appear to be eligible for SBA assistance.

5. Potential applicants are not to be referred back and forth between FmHA and SBA. Representatives of each agency must be reasonably certain that the applicant and proposed use of proceeds may be eligible for assistance from the other agency before a referral is made.

6. Neither agency will refuse a loan request from an applicant who prefers to file with that agency.

7. Agricultural applicants filing for financial assistance from either agency will give written permission for FmHA and SBA to exchange whatever prior or current loan application and loan experience information including appraisals, either may have in its files.

8. Applicants who are denied FmHA assistance for any reason, including lack of FmHA funding, may contact SBA for assistance.

9. Applicants filing for financial assistance from either agency must use the forms and procedure of the agency being requested to provide the assistance. An applicant who is denied assistance by either agency must use a new application to file with the other in accordance with that agency's forms and procedures.

10. Applicants should not have to apply to two Federal agencies to borrow funds for a single purpose. Therefore, if either FmHA

or SBA can make the entire loan, the applicant should not be referred to the other agency for part of the funds needed. If either FmHA or SBA cannot make the entire loan, the applicant should be referred to the other agency. Joint funding with shared collateral between the agencies is not encouraged and should be used only as a last resort.

Description of Lending Policies

11. The FmHA makes guaranteed loans and insured loans. Guaranteed loans are loans where the lending institution advances the entire funds from its account and the FmHA guarantees repayment of a certain percentage of principal and interest. Insured loans are those made from one of FmHA's insurance funds.

The SBA makes guaranteed, immediate participation and direct loans. The Guaranteed loans are those where the lending institution advances the entire loan and the SBA agrees to purchase a percentage of the outstanding balance at time of default. Immediate participation loans are those where SBA disburses a percentage of the loan and the lender disburses the remainder from its account. Direct loans are made with SBA funds alone.

FmHA Loan Programs for Farmers

12. Operating Loans.

a. Eligibility.

Be a citizen of the United States.

Be unable to obtain credit elsewhere (Exclusive of SBA.)

Be the operator of a family farm.

NOTE: A "family farm" is defined as "one that will produce agricultural commodities for sale in sufficient quantities so that it is recognized as a farm rather than a rural residence; one that will provide substantial income by itself and which together with an other dependable income will enable the family to pay necessary family and other operating expenses, including maintenance of essential chattel and real property and pay debts; and one for which the operator and his immediate family provide the management and are actively engaged in the operation by providing a major amount of the farm and any non-farm enterprise labor. A reasonable amount of hired labor may be used during seasonal peakload periods."

b. Loan Purposes.

Finance livestock, machinery and operating expenses.

Refinance debts.

Finance non-farm enterprises.

c. Terms.

Up to seven years with five year renewal.

Interest rate based on the cost of Treasury borrowings.

d. Loan Limit—$50,000.

13. Farm Ownership Loans.

a. Eligibility.

Be a citizen of the United States.

Be unable to obtain the credit from other sources (exclusive of SBA.)

b. Loan Purpose.

Buy land.

Construct and repair farm buildings.

Develop land and pollution control measures.

Develop farm irrigation facilities and domestic water supply.

Refinance debt.

Finance non-farm enterprise.

c. Terms.

Up to 40 years.

Five (5) percent interest rate.

d. Loan Limits.

$100.000.

Maximum debt on security with other credit is $225,000.

14. Soil and Water Loans.

a. Eligibility.

Be unable to obtain the credit elsewhere (exclusive of SBA).

Be a farm tenant, owner, partnership or corporation engaged in farming.

b. Loan Purposes.

Develop land and pollution control practices.

Water development.

Purposes related to soil and water conservation.

c. Terms.

Up to 40 years.

Five (5) percent interest.

d. Loan Limits.

$100,000.

Maximum debt on security with other credit is $225,000.

15. Recreation Loans.

a. Eligibility.

Be a citizen of the United States.

Be unable to obtain the credit elsewhere (exclusive of SBA).

Be an individual engaged in farming when the loan is applied for.

b. Loan Purposes.

Convert all or part of the farm to outdoor recreation enterprises.

Acquire land and easement for recreational uses.

Refinance debts.

c. Terms.

Up to 40 years.

Five (5) percent interest rate.

d. Loan Limits.

$100,000.

Maximum debt on security with other credit is $225,000.

16. Rural Housing.

a. Eligibility.

Be a U.S. Citizen or permanent resident.

Be unable to obtain credit elsewhere (exclusive of SBA).

Be a farmowner without decent, safe and sanitary housing for his own use or the use f tenants, sharecroppers, farm laborers or arm manager.

b. Loan Purpose.

Buy, build or repair dwellings of modest ize, design and cost.

c. Terms.

Up to 33 years.

Interest rate established periodically ased on housing money market rate.

d. Loan Limits.

The cost of providing modest, decent, safe nd sanitary housing.

17. Business and Industry Loans.

a. Eligibility.

If an individual, a U.S. Citizen.

A cooperative, corporation, partnership, rust, Indian tribe, or other legal entity.

b. Loan Purposes.

Pollution control measures.

c. Terms.

Up to 30 years.

Interest rate is negotiated between lender nd applicant.

c. Loan Limits.

No statutory dollar limit; determined by ost of project and credit factors.

18. Grazing Association Loans.

a. Eligibility.

Be a nonprofit association.

Be unable to obtain credit elsewhere (ex- lusive of SBA).

Provide seasonal grazing for association embers.

b. Loan Purposes.

Acquire land for grazing.

Develop land for grazing.

Pollution control measure incidental to ther authorized purposes.

c. Terms.

Up to 40 years.

Five (5) percent interest rate.

d. Loan Limits.

No statutory or regulatory dollar limit de- rmined by value of security.

19. Irrigation, drainage and soil and water ssociation loans.

a. Eligibility.

Be an association composed primarily of rmers and other rural residents.

Be unable to obtain credit elsewhere (ex- usive of SBA).

Provide a facility to serve farmers and ther rural residents within the service rea.

b. Loan Purpose.

Install or improve drainage facilities.

Install, repair or enlarge irrigation facili- es.

Install or improve soil conservation and ater control facilities including pollution batement.

Special-purpose machinery and equip- ent.

c. Terms.

Up to 40 years.

Five (5) percent interest rate.

d. Loan Limits.

No statutory or regulatory dollar limit determined by value of security.

NOTE: In addition to the eligibility requirements for specific programs listed above, the following eligibility requirements must be met by all FmHA borrowers:

Have the experience to carry out the proposed operation to be financed.

Have the ambition to carry out the proposed operations.

Have the management ability to carry out the obligations required in connection with the loan.

SBA LOAN PROGRAMS FOR AGRICULTURAL ENTERPRISES

In addition to the specific eligibility factors listed under the following SBA programs, a borrower must be of good character, be an eligible small business under SBA rules and regulations (13 CFR Parts 121 and 122), be organized for profit, and be able to evidence reasonable assurance of ability to repay the loan from the profits of the business. Can be proprietorship, partnership or corporate business organization, and need not be a citizen of the U.S.A.

20. Regular Business Loans—7(a).

a. Eligibility.

Be eligible under SBA rules and regulations (13 CFR Part 120).

Be unable to obtain the credit from non-Federal sources through utilization of personal resources or otherwise.

b. Loan Purpose.

Purchase of land and buildings and land improvements (fencing, irrigation systems, etc.) including pollution control facilities essential to the small business.

Construction, renovation or improvement (including water systems) of (i) farm building other than residential buildings (ii) residential building essential to the business if not available from other Federal Sources.

Purchase of farm machinery and equipment (appliances and other household contents used for residential purposes are not eligible).

Operating expenses directly related to the farming operation excluding personal or family living expenses.

Refinancing of debt directly related to the farming operation, but excluding personal or family debt.

c. Terms.

The interest rate on direct and SBA share of immediate participation loans is based on a legislative formula.

The lender's interest rate on immediate participation and guaranty participation loans is established by the lending institution, within SBA policy, but cannot exceed SBA's maximum which is periodically published in the FEDERAL REGISTER.

Maturity of the loans will generally not exceed one year for annual seed, feed, fertilizer and other annual needs, 7 years for the portion of the loan used for working capital, 10 years for that portion of the loan use for livestock and/or farm machinery and equipment, and 20 years for that portion of the loan used for acquisition or construction of real estate. However, all borrowers are expected to repay the loan as soon as possible and these maximum maturities are not automatically available in every case.

SBA loans are generally repaid in even monthly payments of principal and interest. However, quarterly, semiannual, annual or seasonal payments can be arranged when necessary.

d. Loan Limits.

Direct loans have an administrative limit of $150,000.

Immediate participation loans have an administrative limit of $150,000, SBA share. (Both the direct and immediate participation administrative limits can be waived in exceptional situations by SBA's Regional Directors.)

Guaranty participation loans have a limit of $350,000, SBA share, except that in exceptional situations the SBA share can be increased to $500,000.

The limits on a borrower's total indebtedness to SBA on all outstanding loans is (i) the aggregate of direct and the SBA share of immediate participation loans cannot exceed $350,000 and (ii) the aggregate of direct and the SBA share of immediate participation and guaranty participation loans cannot exceed $500,000 at any one time.

21. Economic Opportunity Loans.

a. Eligibility.

Must be economically or socially disadvantaged.

Meet the eligibility requirements set forth in SBA rules and regulations (13 CFR Parts 119 and 120).

b. Loan Purposes.

Can be used for the same purpose as Regular Business Loans.

c. Terms.

Interest on direct and SBA share of immediate participation loans is subject to a legislative formula, and is subject to change quarterly.

The lender's interest on immediate and guaranty participation is the same as for regular business loans.

Maturities of these loans are generally restricted to 10 years for working capital other than annual operating expenses and farm machinery and equipment and to the legislative limit of 15 years for real estate purposes. However, no borrower will receive a longer maturity than is necessary for the loan to be repaid from the business income.

d. Loan Limits.

These loans cannot exceed $100,000 SBA share, whether direct, immediate participation or guaranty.

22. Water Pollution Control Loans.

a. Eligibility.

Meet eligibility requirements set forth in SBA rules and regulations (13 CFR Parts 120 and 123).

Must have a statement from EPA of the necessity and adequacy.

Must show evidence of substantial economic injury.

b. Loan Purposes.

Only to make modifications and changes necessary to meet the Federal standards established under the Federal Water Pollution Control Act or State standards established in compliance with the Federal Water Pollution Control Act.

c. Terms.

Interest rate same as for Regular Business Loans.

Maturity not to exceed 30 years.

d. Loan Limits.

No dollar limit.

23. Other Substantial Economic Injury Programs.

The SBA has loan authority to aid small businesses that suffer substantial economic injury as a result of a Federal action or Federally directed action, such as Occupational Health and Safety regulations, Air Pollution Control regulations or being displaced by a Federally financed construction project. These programs are more completely described in 13 CFR Part 123.

Administrative Guidelines

24. The services of FmHA and SBA to lenders and applicants are, by mutual agreement, those that each agency would provide any eligible applicant in the normal course of business and there will be no reimbursement by either agency to the other for such services.

25. The National Office of FmHA and the Central Office of SBA will cooperate with each other in counseling their field offices and in resolving problems in specific cases.

26. This Memorandum of Understanding in no way alters or supersedes the existing Memorandums between the two agencies covering their disaster (emergency) loan authority and FmHA's Business and Industrial Loan Program.

27. This Agreement may be amended at any time by written agreement of both parties.

28. This agreement shall take effect upon the date of execution thereof.

Mitchell P. Kobelinski.
Administrator, SBA.

Dated: September 2, 1976.

Frank B. Elliott,
Administrator, FmHA.

Dated: September 20, 1976.

PART 121—SMALL BUSINESS SIZE REGULATIONS

Sec.

121.1 Purposes and method of establishing size standards.
121.2 Standard industrial classifications and size standards.
121.3 General definitions.
121.4 Small business for financial programs.
121.5 Small business for Government procurement.
121.6 Small business for sales or lease of Government property.
121.7 Small Business Innovation Research Program.
121.8 Size determinations.
121.9 Protests of small business status.
121.10 Size standards responsibilities.
121.11 Procedure for size appeals.
121.12 Small business for paying reduced patent fees.
121.13 Definition of small business financial institution for purposes of sections 8(d) and 15(g) of the Small Business Act.

AUTHORITY: Secs. 3(a) and 5(b)(6) of the Small Business Act, (15 U.S.C. 623(a) and 634(b)(6) and Public Laws 99-591 and 99-661.

SOURCE: 49 FR 5029, Feb. 9, 1984, unless otherwise noted.

§ 121.1 Purpose and method of establishing size standards.

"The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiatives and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation. Such security and well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed. It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including but not limited to contracts or subcontracts for maintenance, repair and construction) be placed with small-business enterprises, to insure that a fair proportion of the total sales of Government property be made to such enterprises, and to maintain and strengthen the overall economy of the Nation."

Small Business Act, Section 2(a), (15 U.S.C. 631).

(a) To implement this policy, Congress established the Small Business Administration (SBA) in 1953 and gave it the responsibility to administer a range of programs designed to achieve these and other social goals. Eligibility for SBA programs requires that a firm be "small." The actual setting of size standards, i.e., the size specification of "small" is delegated to the Administrator of the SBA.

(b) Size standards are established primarily to define eligibility for SBA programs and Federal procurement purposes. It is clear, both from the Act itself and from the legislative history, that the specification of what is a small business has been left to administrative, rather than legislative, determination. Size standards vary by industry with particular attention to the structure of the designated industry, Administration policy and the needs of the various Federal programs to which they apply. In its most basic sense, this is the approach of establishing size standards. Factors, among others, which are examined for the purpose of setting size standards include maximum size of firms, average firm size, the extent of industry dominance by large firms, the number of firms, the distribution by firm size of sales and employees in the industry, the presence of Federal procurement, and relation to other SBA programs. The development of size standards is not an exact quantitative procedure. No single measure or simple numerical device is the basis for establishing size standards.

(c) The process of establishing size standards is a complex one. The basic sources of data used in establishing size standards include: *The Standard Industrial Classification Manual*, which is used as a guide in defining industries; U.S. Bureau of the Census, Economic Censuses including *Concentration Ratios in Manufacturing, Enterprise Statistics;* special tabulations of the *Enterprise Statistics* and *Annual Survey of Manufactures* prepared for SBA by the U.S. Bureau of the Census; U.S. Department of Commerce, *U.S. Industrial Outlook, Survey of Current Business,* and *County Business Patterns;* Internal Revenue Service, *Statistics of Income;* Dun and Bradstreet, *DMI Market Profile;* and special USEEM tabulations; Economic Information Service, *Marketing Information; Federal Procurement Data System* statistics, SBA's own extensive files of articles and correspondence, and information provided by trade associations.

(d) Under the Regulatory Flexibility Act (Pub. L. 96-354), Federal agencies considering and promulgating regulations relating to small businesses generally utilize small business size criteria developed pursuant to the Small Business Act. However, SBA size standards sometimes may not be appropriate for the particular regulation involved. In such cases where a Federal agency decides the SBA size standard is not appropriate, the agency may, after consultation with the SBA Office of Advocacy, establish a small business definition which is more appropriate to the activities of the agency.

(e) SBA assistance should not be regarded as permanent nor as the primary source of a firm's sales. It should be used to assist a firm to compete in the regular business world, without becoming dependent on continuing Government aid. Small businesses should not rely on Federal assistance from the cradle to the grave, but should plan for the day when they can compete without assistance.

§ 121.2 Standard industrial classifications and size standards.

(a) The following industry size standards apply to all SBA programs except the sales of government property (§ 121.6); physical disaster loans (no size standards); Small Business Investment Companies, Development Companies, and Pollution Control Bonds (see § 121.4). The industry size standards are set forth in the table following this section. Their relationship to the various SBA programs is set forth in §§ 121.4 and 121.5 of these regulations. The table column labeled "SIC" follows the standard industrial classification code as published by the U.S. Government in *the Standard Industrial Classification Manual,* Office of Management and Budget, Executive Office of the President. *The Standard Industrial Classification Manual* is intended to cover the entire field of economic activities. It classifies and defines activities by industry categories and is the source used by SBA as a guide in defining industries for size standards. (It is available for sale from the U.S. Government Printing Office [1] and is in the reference section of most libraries.) The number of employees or annual receipts indicates the maximum allowed for a concern (including its affiliates) to be considered small.

(b) For the purpose of these size standards, the term "number of employees" is a measure of the average employment of a business concern and means its average employment, including the employees of its domestic and foreign affiliates, based on the number of persons employed on a full-time, part-time, temporary, or other basis during each of the pay periods of the preceding 12 months. If a business has not been in existence for 12 months, "number of employees" means the average employment of such concern and its affiliates during the period that such concern has been in existence based on the number of persons employed during each of the pay periods of the period that such concern has been in business. If a business has acquired an affiliate during the applicable 12 month period, it is necessary, in computing the applicant's number of employees, to include the affiliate's number of employees during the entire period rather than only its employees during the period in which it has been an affiliate. The employees of a former affiliate are not included even if such concern had been an affiliate during a portion of the period.

(c)(1) "Annual receipts" of a concern which has been in business for 3 or more complete fiscal years means the annual average gross revenue of the concern taken for the last 3 fiscal years. For the purpose of this definition, gross revenue of the concern includes revenues from sales of products and services, interest, rents, fees, commissions and/or whatever other sources derived, but less returns and allowances, sales of fixed assets, interaffiliate transactions between a concern and its domestic and foreign affiliates, and taxes collected for remittance (and if due, remitted) to a third party. Such revenues shall be measured as entered on the regular books of account of the concern whether on a cash, accrual, or other basis of accounting acceptable to the U.S. Treasury Department for the purpose of supporting Federal income tax returns, except when a change in accounting method from cash to accrual or accrual to cash has taken place during such 3-year period, or when the completed contract method has been used.

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[1] Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Stock Number 4101-0066).

(i) In any case of a change in accounting method from cash to accrual or accrual to cash, revenues for such 3-year period shall, prior to the calculation of the annual average, be restated to the accrual method. In any case where the completed contract method has been used to account for revenues in such 3-year period, revenues must be restated on an accrual basis using the percentage of completion method.

(ii) In the case of a concern which does not keep regular books of accounts, but which is subject to U.S. Federal income taxation, "annual receipts" shall be measured as reported, or to be reported to the U.S. Treasury Department, Internal Revenue Service for Federal income tax purposes, except that any return based on a change in accounting method or on the completed contract method of accounting must be restated as provided for in the preceding paragraphs.

(2) "Annual receipts" of a concern that has been in business for less than 3 complete fiscal years means its total receipts for the period it has been in business, divided by the number of weeks including fractions of a week, that it has been in business, and multiplied by 52. In calculating total receipts under this provision (c)(2), the definitions, and adjustments related to a change of accounting method and the completed contract method of paragraph (c)(1) of this section are applicable.

(d) The size standards by SIC industry appear in the two tables, Table 1 and Table 2. Table 1 shows only emergency interim final size standards for new industry codes in the *1987 SIC Manual* and those industries whose coverage or definition has changed. Table 2 contains all size standards existing under the 1972 SIC system, and accordingly includes all the unchanged industry codes. It remains in effect except for the industries listed in Table 1.

(1) *How to locate the relevant size standard:* To use the two tables, the following procedure should be used:

(i) Using the *1972 SIC Manual* and its 1977 Supplement, locate the industry and SIC code for the product or service under consideration.

(ii) Refer to Table 1 below, "List of Revised Size Standards." If the SIC from the 1972/77 *SIC Manual* appears in the first column, refer to the descriptive title in the third column for the most apprppriate activity (1987 SIC industry), and use the size standard in the 4th column.

(iii) If the SIC does not appear in Table 1, refer to Table 2 to determine the size standard.

(iv) Even though some SIC codes appear in both tables, the listing in Table 1 (Revised Size Standards) takes precedence over the listing in Table 2.

(2) Table 1 does not include revisions of SIC's for which no size standard currently exists. In Table 1 an asterisk (*) indicates a new SIC in 1987 not used before in 1972 (or previously used for a totally different activity, now transferred elsewhere). In both Tables, numbers in the "Size Standard" column indicate number of employees; dollar figures indicate annual receipts in millions of dollars (unless otherwise specified).

TABLE 1—LIST OF REVISED SIZE STANDARDS

A. AGRICULTURE, FORESTRY, AND FISHING

1972 SIC	1987 SIC	1987 Descriptive title	Size standard
0181	0181	Ornamental Nursery Products	$0.5
0182	0182	Food Crops Grown Under Cover	0.5
0189	0181	Ornamental Nursery Products	0.5
	0182	Food Crops Grown Under Cover	0.5
0279	*0273	Animal Aquaculture	0.1
	0279	Animal Specialties, N.E.C	0.1
0721	0721	Crop Planting and Protection	3.5
0722	0722	Crop Harvesting	3.5
0723	0723	Crop Preparation Services for Market	3.5
0724	0724	Cotton Ginning	3.5
0729	0721	Crop Planting and Protection	3.5
	0722	Crop Harvesting	3.5
	0723	Crop Preparation Services for Market	3.5
	0724	Cotton Ginning	3.5
0821, 0843, and 0849	*0831	Forest Products, Except Timber	3.5

B. MINING

1972 SIC	1987 SIC	1987 Descriptive title	Size standard
1051, 1092, and 1099	1099	Metal Ores, N.E.C	500
1111	*1231	Anthracite Mining	500
1112, 1213	*1241	Coal Mining Services	$3.5
1211	*1222	Bituminous Coal Mining, Underground	500
	*1221	Bituminous and Lignite Coal Mining, Surface, and Bituminous Coal Preparation Plants	500
1452, 1453, 1454, and 1459	1459	Clay and Related Minerals, N.E.C	500
1472, 1473, 1476, 1477, and 1479	1479	Chemical and Fertilizer Mining, N.E.C	500
1492, 1496, and 1499	1499	Nonmetallic Minerals, N.E.C	500

C. CONSTRUCTION

1972 SIC	1987 SIC	1987 Descriptive title	Size standard
1611	1629	Heavy Construction, N.E.C., Except Dredging	$17.0
	1629	Dredging	$9.5
	1771	Concrete Work	$7.0
	1611	Highway and Street Construction	$17.0
1629	1629	Heavy Construction, N.E.C., Except Dredging	$17.0
	1629	Dredging	$9.5
1771	1771	Concrete Work	$7.0

D. MANUFACTURING

1972 SIC	1987 SIC	1987 Descriptive title	Size standard
2016, 2017	*2015	Poultry Slaughtering, Dressing, and Processing	500
2032	2091	Canned and Cured Seafoods	500
	2032	Canned Specialties	1,000
2034	*2068	Salted and Roasted Nuts and Seeds	500
	2034	Dehydrated Fruits, Vegetables, Soups	500
2038	*2053	Frozen Bakery Products	500
	2038	Frozen Specialties, N.E.C	500
2047	2047	Dog and Cat Food	500
	2048	Prepared Feeds, N.E.C	500
2048	2048	Prepared Feeds, N.E.C	500
2065	*2068	Salted and Roasted Nuts	500
	*2064	Confectionery Products	500
2066	2066	Chocolate and Cocoa Products	500
2091	2091	Canned and Cured Seafoods	500
2099	2066	Chocolate and Cocoa Products	500

D. MANUFACTURING—Continued

1972 SIC	1987 SIC	1987 Descriptive title	Size standard
	*2096	Potato Chips and Similar Products	500
	*2068	Salted and Roasted Nuts and Seeds	500
	2099	Food Preparations, N.E.C	500
2258	2258	Warp Knit Fabric Mills	500
2271, 2272, 2279	*2273	Carpets and Rugs	500
2281	2281	Yarn Mills	500
2282	2282	Throwing and Winding Mills	500
2283	2284	Thread Mills	500
	2281	Yarn Mills	500
	2282	Throwing and Winding Mills	500
2284	2284	Thread Mills	500
2291	2299	Textile Goods, N.E.C	500
2292	2258	Warp Knit Fabric Mills	500
2293, 2294, 2299	2299	Textile Goods, N.E.C	500
2321	2321	Men's and Boys' Shirts	500
	2322	Men's and Boys' Underwear and Nightwear	500
2322	2322	Men's and Boys' Underwear and Nightwear	500
2327	*2325	Men's and Boys' Separate Trousers and Casual Slacks	500
2328	*2325	Men's and Boys' Separate Trousers and Casual Slacks	500
	*2326	Men's and Boys' Work Clothing	500
2351, 2352	*2353	Hats, Caps, and Millinery	500
2363, 2369	2369	Children's Outerwear N.E.C	500
2411	2411	Logging	500
2421	2411	Logging	500
	2421	Sawmills and Planing Mills	500
2431	2431	Millwork	500
2492	*2493	Reconstituted Wood Products	500
2499	*2493	Reconstituted Wood Products	500
	2499	Wood Products, N.E.C	500
2522	2522	Office Furniture, Except Wood	500
2542	2542	Partitions and Fixtures, Except Wood	500
2599	2522	Office Furniture, Except Wood	500
	2542	Partition and Fixtures, Except Wood	500
	2599	Furniture and Fixtures, N.E.C	500
2611	2611	Pulp Mills	750
2621	2611	Pulp Mills	750
	2621	Paper Mills	750
2631	2611	Pulp Mills	750
	2631	Paperboard Mills	750
2641	*2671	Paper Coating and Laminating for Packaging	500
	*2672	Paper Coating and Laminating, Except for Packaging	500
2642	*2677	Envelopes	500
2643	*2674	Bags: Uncoated Paper and Multiwall	500
	*2673	Bags: Plastics, Laminated and Coated	500
2645	*2675	Die-Cut Paper and Paper Board	500
2646	*2679	Converted Paper Products, N.E.C	500
2647	*2676	Sanitary Paper Products, N.E.C	500
2648	*2678	Stationery Products	500
2649	*2679	Converted Paper Products, N.E.C	500
2651	*2657	Folding Paperboard Boxes	750
2654	*2657	Folding Paperboard Boxes	750
	*2656	Sanitary Food Containers	750
2661	*2493	Reconstituted Wood Products	500
	2621	Paper Mills	750
2751	*2759	Commercial Printing, N.E.C	500
2753	*2796	Platemaking	500
	*2759	Commercial Printing, N.E.C	500
2754	*2796	Platemaking	500
	2754	Commercial Printing, Gravure	500
2793, 2794, 2797	*2796	Platemaking	500
2819	2819	Industrial Inorganic Chemicals, N.E.C	1,000
2831	*2835	Diagnostic Substances	500
	*2836	Biological Products, Except Diagnostic Substances	500
2869	2819	Industrial Inorganic Chemicals, N.E.C	1,000
	2869	Industrial Organic Products, N.E.C	1,000

D. MANUFACTURING—Continued

1972 SIC	1987 SIC	1987 Descriptive title	Size standard
3031	3069	Fabricated Rubber Products, N.E.C.	500
3041	3052	Rubber and Plastics Hose and Belting	500
3069	*3061	Molded, Extruded, and Lathe-Cut Rubber Mechanical Goods	500
	3069	Fabricated Rubber Products, N.E.C.	500
3079	*3081	Unsupported Sheet and Film	500
	*3082	Unsupported Profile Shapes	500
	*3083	Laminated Plate and Sheet	500
	*3084	Pipe	500
	*3085	Bottles	500
	*3086	Plastics Foam Products	500
	*3087	Custom Compounding of Purchased Resins	500
	*3088	Plumbing Fixtures	500
	3432	Plumbing Fixture Fittings	500
	*3089	Plastics Products, N.E.C.	500
3264	3264	Porcelain Electrical and Electronic Supplies	500
3293	*3053	Gaskets, Packing, and Sealing Devices	500
3332, 3333, and 3339	3339.	Primary Nonferrous Metals, N.E.C.	750
3361	*3363	Aluminum Die Castings	500
	*3365	Aluminum Foundries	500
3362	*3364	Nonferrous Die Castings, Except Aluminum	500
	*3366	Copper Foundries	500
3369	*3364	Nonferrous Die Castings, Except Aluminum	500
	3369	Nonferrous Foundries, Except Aluminum and Copper	500
3423	3423	Hand and Edge Tools, N.E.C.	500
3432	3432	Plumbing Fixture Fittings	500
3433	3567	Industrial Furnaces and Ovens	500
	3433	Heating Equipment, Except Electric	500
3442	2431	Millwork	500
	3442	Metal Doors, Sash, and Trim	500
3444	3449	Miscellaneous Metal Work	500
	3444	Sheet Metal Work	500
3449	3449	Miscellaneous Metal Work	500
3469	3449	Miscellaneous Metal Work	500
	3469	Metal Stampings, N.E.C.	500
3494	*3492	Fluid Power Valves and Hose Fittings	500
	*3491	Industrial Valves	500
	3494	Valves and Pipe Fittings, N.E.C.	500
3531	3531	Construction Machinery	750
3536	3531	Construction Machinery	750
	3537	Industrial Trucks and Tractors	750
	3536	Hoists, Cranes, and Monorails	500
3537	3537	Industrial Trucks and Tractors	750
3549	*3548	Welding Apparatus	500
	3559	Special Industry Machinery, N.E.C.	500
	3549	Metalworking Machinery, N.E.C.	500
3551	*3565	Packaging Machinery	500
	*3556	Food Products Machinery	500
3555	3069	Fabricated Rubber Products, N.E.C.	500
	3423	Hand and Edge Tools, N.E.C.	500
	3555	Printing Trades Machinery	500
3559	3559	Special Industry Machinery, N.E.C.	500
3561	*3594	Fluid Power Pumps and Motors	500
	3561	Pumps and Pumping Equipment, Except Fluid Power Pumps.	500
3565	*3543	Industrial Patterns	500
3566	*3594	Fluid Power Pumps and Motors	500
	3566	Speed Changers, Drives, and Gears	500
3567	3567	Industrial Furnaces and Ovens	500
3569	*3594	Fluid Power Pumps and Motors	500
	*3565	Packaging Machinery	500
	3569	General Industrial Machinery, N.E.C.	500
3572	3579	Office Machines, N.E.C.	500
3573	*3571	Computers	1,000
	*3572	Computer Storage Devices	1,000
	*3575	Computer Terminals	1,000
	*3695	Recording Media	1,000
	*3577	Computer Peripheral Equipment, N.E.C.	1,000

D. MANUFACTURING—Continued

1972 SIC	1987 SIC	1987 Descriptive title	Size standard
3574	*3578	Calculating and Accounting Machines	1,000
3576	*3596	Scales and Balances, Except Laboratory	500
3579	3579	Office Machines, N.E.C	500
3585	3585	Refrigeration and Heating Equipment	750
3599	*3593	Fluid Power Cylinders and Actuators	500
	3599	Machinery, Except Electrical, N.E.C	500
3613	*3625	Relays and Industrial Controls	750
	3613	Switchgear and Switchboard Apparatus	750
3622	*3625	Relays and Industrial Controls	750
3623	*3548	Welding Apparatus	500
3636	3639	Household Appliances, N.E.C	500
	3559	Special Industry Machinery, N.E.C	500
3639	3639	Household Appliances, N.E.C	500
3641	3641	Electric Lamps	1,000
3661	*3575	Computer Terminals	1,000
	3661	Telephone and Telegraph Apparatus	1,000
3662	3661	Telephone and Telegraph Apparatus	1,000
	*3663	Radio and TV Communications Systems and Equipment, and Broadcast and Studio Equipment	750
	*3812	Search, Detection, Navigation, and Guidance Systems and Instruments	750
	*3669	Other Communications Equipment, N.E.C	750
	3829	Measuring and Controlling Devices, N.E.C	500
	3699	Electrical Equipment and Supplies, N.E.C	750
3671, 3672, 3673	3671	Electron Tubes	750
3679	3264	Porcelain Electrical and Electronic Supplies	500
	*3625	Relays and Industrial Controls	750
	3671	Electron Tubes	750
	*3672	Printed Circuit Boards	500
	*3695	Recording Media	1,000
	3679	Electronic Components, N.E.C	500
3693	*3845	Electromedical and Electrotherapeutic Apparatus	500
	*3844	X-Ray Apparatus and Tubes	500
3699	3641	Electric Lamps	1,000
	3585	Refrigeration and Heating Equipment	750
	3699	Electrical Equipment and Supplies, N.E.C	750
3728	*3492	Fluid Power Valves and Hose Fittings	500
	*3594	Fluid Power Pumps and Motors	500
	*3593	Fluid Power Cylinders and Actuators	500
	3728	Aircraft Equipment, N.E.C	1,000
3811	*3812	Search, Detection, Navigation, and Guidance Systems and Instruments	750
	*3821	Laboratory Apparatus and Furniture	500
	3829	Measuring and Controlling Devices, N.E.C	500
	*3826	Analytical Instruments	500
3829	3829	Measuring and Controlling Devices, N.E.C	500
3832	*3826	Analytical Instruments	500
	3829	Measuring and Controlling Devices, N.E.C	500
	*3827	Optical Instruments	500
3962	3999	Manufacturing Industries, N.E.C	500
3963, 3964	*3965	Needles, Pins, Buttons, and Clothing Fasteners	500
3999	3999	Manufacturing Industries, N.E.C	500

E. TRANSPORTATION AND PUBLIC UTILITIES

1972 SIC	1987 SIC	1987 Descriptive title	Size standard
4171, 4172	*4173	Bus Terminal and Service Facilities	$3.5
4212	*4215	Courier Services, Except by Air	$12.5
	4212	Local Trucking, Without Storage	$12.5
4213	*4215	Courier Services, Except by Air	$12.5
	4213	Trucking, Except Local	$12.5
4224, 4226	4226	Special Warehousing and Storage, N.E.C	$12.5
4411	*4412	Deep Sea Foreign Transportation of Freight	500

E. TRANSPORTATION AND PUBLIC UTILITIES—Continued

1972 SIC	1987 SIC	1987 Descriptive title	Size standard
	*4481	Deep Sea Transportation of Passengers, Except by Ferry.	500
4421	*4424	Deep Sea Domestic Transportation of Freight	500
	*4481	Deep Sea Transportation of Passengers, Except by Ferry.	500
4422	*4424	Deep Sea Domestic Transportation of Freight	500
	*4481	Deep Sea Transportation of Passengers, Except by Ferry.	500
4423	*4424	Deep Sea Domestic Transportation of Freight	500
	*4481	Deep Sea Transportation of Passengers, Except by Ferry.	500
4431	*4432	Freight Transportation on the Great Lakes and Saint Lawrence Seaway.	500
	*4481	Deep Sea Transportation of Passengers, Except by Ferry.	500
	*4462	Ferries	500
4441	*4449	Water Transportation of Freight, N.E.C.	500
	*4489	Water Transportation of Passengers, N.E.C.	500
4452	*4482	Ferries	500
4453	*4499	Water Transportation Services, N.E.C.	$3.5
4454	*4492	Towing and Tugboat Services	$3.5
4459	*4449	Water Transportation of Freight, N.E.C.	500
	*4489	Water Transportation of Passengers, N.E.C.	500
4463	*4491	Marine Cargo Handling	$12.5
4464	*4499	Water Transportation Services, N.E.C.	$3.5
4469	*4493	Marinas	$3.5
	4959	Sanitary Services, N.E.C.	$3.5
	*4499	Water Transportation Services, N.E.C.	$3.5
4511	*4513	Air Courier Services	1,500
	*4512	Air Transportation, Scheduled	1,500
4521	*4512	Air Transportation, Scheduled	1,500
	*4513	Air Courier Services	1,500
	*4522	Air Transportation, Nonscheduled	1,500
4582, 4583	*4581	Services Related To Air Transportation	$3.5
4712, 4723	*4731	Freight Forwarding and Arrangement	$12.5
4722	*4724	Travel Agencies	$3.5
	*4725	Tour Operators	$3.5
	*4729	Arrangement of Passenger Transportation N.E.C.	$3.5
4742, 4743	*4741	Railroad Car Rental	$3.5
4782, 4784	*4785	Inspection Services, Fixed Facilities, N.E.C.	$3.5
4811	*4812	Radio Telephone Communication Services	1,500
	*4813	Telephone Communications, Except Radio Telephone.	1,500
4833	*4841	Cable and Other Pay TV	$7.5
	*4833	Television Stations	$7.0
4899	*4841	Cable and Other Pay TV	$7.5
	4899	Communications Services, N.E.C.	$7.5
4959	4959	Sanitary Services, N.E.C.	$3.5

F. WHOLESALE TRADE

1972 SIC	1987 SIC	1987 Descriptive title	Size standard
5013	5013	Motor Vehicle Parts and Supplies, New	100
	*5015	Motor Vehicle Parts, Used	100
5039	*5032	Brick, Stone, and Related Products	100
	*5033	Roofing, Siding, and Insulation	100
	5039	Construction Materials, N.E.C.	100
5041	*5091	Sporting and Recreational Goods	100
5042	*5092	Toys and Hobby Goods and Supplies	100
5063	5065	Electronic Parts and Equipment	100
	5084	Industrial Machinery	100
	5063	Electrical Apparatus and Equipment	100
5065	5065	Electronic Parts and Equipment	100
5081	*5045	Computers and Computer Peripheral Equipment and Software.	100

F. WHOLESALE TRADE—Continued

1972 SIC	1987 SIC	1987 Descriptive title	Size standard
	*5044	Office Equipment	100
	*5046	Commercial Equipment, N.E.C	100
5084	5084	Industrial Machinery and Equipment	100
5086	*5047	Medical and Hospital Equipment	100
	*5048	Ophthalmic Goods	100
	*5049	Professional Equipment, N.E.C	100
5133, 5134	*5131	Piece Goods and Notions	100
5152, 5159	5159	Farm-Product Raw Materials, N.E.C	100
5161	*5162	Plastics Materials and Basic Shapes	100
	*5169	Chemicals and Allied Products, N.E.C	100
5199	*5192	Books Periodicals, and Newspapers	100
	*5193	Flowers and Florists' Supplies	100
	5199	Nondurable Goods, N.E.C	100

G. RETAIL TRADE

1972 SIC	1987 SIC	1987 Descriptive title	Size standard
5311	5399	Misc. General Merchandise Stores	$3.5
	5311	Department Stores	$3.5
5399	5399	Misc. General Merchandise Stores	$3.5
5422, 5423	*5421	Meat and Fish (Seafood) Markets	$3.5
5462, 5463	*5461	Retail Bakeries	$3.5
5561	5599	Automotive Dealers, N.E.C	$3.5
	5561	Recreational Vehicle Dealers	$3.5
5599	5599	Automotive Dealers, N.E.C	$3.5
5631, 5681	*5632	Women's Accessory and Specialty Stores	$3.5
5732	*5734	Computer and Software Stores	$4.5
	*5731	Radio, Television, and Electronics Stores	$4.5
5733	*5735	Record and Prerecorded Tape Stores	$3.5
	*5736	Musical Instrument Stores	$3.5
5931	*5015	Motor Vehicle Parts, Used	100
	*5932	Used Merchandise Stores	$3.5
5982	5399	Miscellaneous Retail Stores, N.E.C	$3.5
	*5989	Fuel Dealers, N.E.C	$3.5
5999	*5995	Opticians Stores	$3.5
	5999	Miscellaneous Retail Stores, N.E.C	$3.5

H. FINANCE, INSURANCE, AND REAL ESTATE

1972 SIC	1987 SIC	1987 Descriptive title	Size standard
6022	*6036	Savings Institutions, Not Federally Chartered	$100 million.[2]
	6022	State Commercial Banks	$100 million.[2]
6023	*6036	Savings Institutions, Not Federally Chartered	$100 million.[2]
	6022	State Commercial Banks	$100 million.[2]
6024	*6036	Savings Institutions, Not Federally Chartered	$100 million.[2]
	6022	State Commercial Banks	$100 million.[2]
6025, 6026, and 6027	*6021	National Banks	$100 million.[2]
6028	*6029	Commercial Banks, N.E.C	$100 million.[2]
6032	*6036	Savings Institutions, Not Federally Chartered	$100 million.[2]
Federal Savings Banks, FDIC and FSLIC	*6035	Savings Institutions, Federally Chartered	$100 million.[2]
6033	*6036	Savings Institutions, Not Federally Chartered	$100 million.[2]

H. FINANCE, INSURANCE, AND REAL ESTATE—Continued

1972 SIC	1987 SIC	1987 Descriptive title	Size standard
6034	*6036	Savings Institutions, Not Federally Chartered	$100 million [2]
6122	*6035	Savings Institutions, Federally Chartered	$100 million [2]
6123	*6036	Savings Institutions, Not Federally Chartered	$100 million [2]
6124	*6036	Savings Institutions, Not Federally Chartered	$100 million [2]
6125	*6036	Savings Institutions, Not Federally Chartered	$100 million [2]
6411	6411	Insurance Agents, Brokers, and Service	$3.5
6531	6531	Real Estate Agents and Managers	$1.0 [3]
6611	6411	Insurance Agents, Brokers and Service	$3.5
	6531	Real Estate Agents and Managers	$1.0 [3]
	8111	Legal Services	$3.5

[2] As measured by assets.
[3] Commission only.

I. SERVICES

1972 SIC	1987 SIC	1987 DESCRIPTIVE TITLE	Size standard
7214	7219	Laundry and Garment Services, N.E.C	$3.5
7219	7219	Laundry and Garment Services, N.E.C	$3.5
7299	*7291	Tax Return Preparation Services	$3.5
	*7352	Medical Equipment Rental	$3.5
	*7991	Physical Fitness Facilities	$3.5
	7219	Laundry and Garment Services, N.E.C	$3.5
	7299	Miscellaneous Personal Services	$3.5
7321	*7322	Adjustment and Collection Services	$3.5
	*7323	Credit Reporting	$3.5
7332	*7334	Photocopying and Duplicating Services	$3.5
7333	*7335	Commercial Photography	$3.5
	*7336	Commercial Art and Graphic Design	$3.5
7339	*7338	Stenographic and Court Reporting Services	$3.5
	*7334	Photocopying and Duplicating Services	$3.5
7341, 7349	7349	Building Maintenance Services, N.E.C	$8.0
7351	*7383	News Syndicates	$3.5
7362	*7363	Help Supply Services (includes base maintenance).	$13.5
7369	*8744	Facilities Support Management Services	$3.5
	*7363	Help Supply Services (includes base maintenance).	$13.5
7372	*7371	Custom Computer Programming Services	$7.0
	7372	Prepackaged Computer Software	$7.0
	*7373	Computer Integrated System Design	$7.0
7374	*7375	Electronic Information Retrieval Services	$7.0
	*7376	Computer Facilities Management Services	$7.0
	7374	Computer Processing and Data Preparation Services.	$7.0
7379	*7377	Computer Rental and Leasing	$12.5
	*7378	Computer Maintenance and Repair	$12.5
	7379	Computer Related Services, N.E.C	$12.5
7391	*8731	Commercial Physical and Biological Research	500
7392	*8741	Management Services	$3.5
	*8742	Management Consulting Services	$3.5
	*8743	Public Relations Services	$3.5
	*8732	Commercial Economic, Sociological, and Educational Research.	$3.5
	*8748	Business Consulting Services, N.E.C	$3.5
7393	*7381	Detective, Guard, and Armored Car Services	$6.0
	*7382	Security Systems Services	$6.0
7394	*7353	Heavy Construction and Earthmoving Equipment Rental and Leasing.	$3.5
	*7841	Video Tape Rental	$3.5
	*7359	Equipment Rental and Leasing, N.E.C	$3.5
7395	*7384	Photofinishing Laboratories	$3.5

I. SERVICES—Continued

1972 SIC	1987 SIC	1987 DESCRIPTIVE TITLE	Size standard
7396	* 7389	Business Services, N.E.C	$3.5
7397	* 8734	Testing Laboratories	$3.5
7399	* 7389	Business Services, N.E.C	$3.5
7512	* 7514	Passenger Car Rental, Without Drivers	$12.5
	* 7515	Passenger Car Leasing, Without Drivers	$12.5
7523, 7525	* 7521	Automobile Parking	$3.5
7531, 7535	* 7532	Top, Body, and Upholstery Repair and Paint Shops.	$3.5
7539	* 7533	Motor Vehicle Exhaust Systems Repair Shops	$3.5
	* 7536	Motor Vehicle Glass Replacement Shops	$3.5
	* 7537	Motor Vehicle Transmission Repair Shops	$3.5
	7539	Automotive Repair Shops, N.E.C	$3.5
7813, 7814	* 7812	Motion Picture Production	$14.5
7823, 7824	* 7822	Motion Picture and Tape Distribution	$14.5
7932	7999	Amusement and Recreation Svs, N.E.C	$3.5
7997	* 7991	Physical Fitness Facilities	$3.5
	7997	Membership Sports and Recreation Clubs	$3.5
7999	* 8412	Museums and Art Galleries	$3.5
	* 8422	Botanical and Zoological Gardens	$3.5
	* 7991	Physical Fitness Facilities	$3.5
	7999	Amusement and Recreation Services, N.E.C	$3.5
8011	8011	Offices and Clinics of Doctors of Medicine	$3.5
8021	8021	Offices and Clinics of Dentists	$3.5
8049	* 8043	Offices of Podiatrists	$3.5
	8049	Offices of Health Practitioners, N.E.C	$3.5
8059	* 8052	Intermediate Health Care Facilities	$3.5
	8059	Nursing and Personal Care Facilities, N.E.C	$3.5
8081	8011	Offices and Clinics of Doctors of Medicine	$3.5
	8021	Offices and Clinics of Dentists	$3.5
	* 8092	Kidney Dialysis Centers	$3.5
	* 8093	Specialty Outpatient Clinics, N.E.C	$3.5
8091	* 8082	Home Health Care Agencies	$3.5
	* 8099	Health and Allied Services, N.E.C	$3.5
8111	8111	Legal Services	$3.5
8241, 8249	8249	Vocational Schools, N.E.C[4]	$3.5
8321	* 8322	Individual and Family Social Services	$3.5
8399	* 8322	Individual and Family Social Services	$3.5
	8399	Social Services, N.E.C	$3.5
8411	* 8412	Museums and Art Galleries	$3.5
8421	* 8422	Botanical and Zoological Gardens	$3.5
8911	* 8711	Engineering Services: Military and Aerospace Equipment and Military Weapons.	$13.5
		Marine Engineering and Naval Architecture	$9.0
		Other Engineering Services	$2.5
	* 8712	Architectural Services (Other Than Naval)	$2.5
	* 8713	Surveying Services	$2.5
8922	* 8733	Noncommercial Research Organizations	$3.5
8931	* 8721	Accounting, Auditing, and Bookkeeping Services.	$4.0

TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY

[See footnotes at end of table]

SIC	Description (N.E.C. = Not Elsewhere Classified, * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars
		Final Rule
DIVISION A—AGRICULTURE		
Major Group 01—Agricultural Production—Crops		
0111-0191		[1] $0.5
Major Group 02—Agricultural Production—Livestock and Animal Specialities		
0211	Beef Cattle Feedlots (Custom)	$1.0
0212-0291	Livestock and Animal Specialties, Except 0211 and 0252.	$0.5
0252	Chicken Eggs	$1.0
Major Group 07—Agricultural Services		
All SICs		$3.5
Major Group 08—Forestry		
All SICs		$3.5
Major Group 09—Fishing, Hunting, and Trapping		
All SICs		$2.0
Division B—Mining		
Major Group 10—Metal Mining		
1011	Iron Ores	500
1021	Copper Ores	500
1031	Lead and Zinc Ores	500
1041	Gold Ores	500
1044	Silver Ores	500
1061	Ferroalloy Ores, Except Vanadium.	500
1081	Metal Mining Services	$3.5
1094	Uranium-Radium-Vanadium Ores.	500
1099	Miscellaneous Metal Ores, N.E.C.	500
Major Group 12—Coal Mining		
1221*	Bituminous Coal and Lignite Surface Mining.	500
1222*	Bituminous Coal Underground Mining.	500
1231*	Anthracite Mining	500
1241*	Coal Mining Services	$3.5
Major Group 13—Oil and Gas Extraction		
1311	Crude Petroleum and Natural Gas.	500
1321	Natural Gas Liquids	500
1381	Drilling Oil and Gas Wells	500
1382	Oil and Gas Field Exploration Services.	$3.5
1389	Oil and Gas Field Services, N.E.C.	$3.5
Major Group 14—Mining and Quarrying of Nonmetallic Minerals, Except Fuels		
1411	Dimension Stone	500
1422	Crushed and Broken Limestone.	500
1423	Crushed and Broken Granite	500
1429	Crushed and Broken Stone, N.E.C.	500
1442	Construction Sand and Gravel	500
1446	Industrial Sand	500
1455	Kaolin and Ball Clay	500
1459	Clay, Ceramic, and Refractory Minerals, N.E.C.	500
1474	Potash, Soda, and Borate Minerals.	500
1475	Phosphate Rock	500
1479	Chemical and Fertilizer Mineral Mining, N.E.C.	500
1481	Nonmetallic Minerals Services, Except Fuels.	$3.5
1499	Miscellaneous Nonmetallic Minerals, Except Fuels.	500
DIVISION C—CONSTRUCTION		
Major Group 15—Building Construction—General Contractors and Operative Builders		
1521	General Contractors—Single-Family Houses.	$17.0
1522	General Contractors—Residential Buildings, Other Than Single-Family.	$17.0
1531	Operative Builders	$17.0
1541	General Contractors—Industrial Buildings and Warehouses.	$17.0
1542	General Contractors—Nonresidential Buildings, Other Than Industrial Buildings and Warehouses.	$17.0
Major Group 16—Heavy Construction Other Than Building Construction—Contractors		
1611	Highway and Street Construction, Except Elevated Highways.	$17.0
1622	Bridge, Tunnel, and Elevated Highway Construction.	$17.0
1623	Water, Sewer, Pipeline, and Communications and Power Line Construction.	$17.0

TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY—Continued

[See footnotes at end of table]

SIC	Description (N.E.C. = Not Elsewhere Classified, * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars
		Final Rule
1629	Heavy Construction, Except Dredging, N.E.C.	$17.0
1629	Dredging and Surface Cleanup Activities [2].	$13.5
Major Group 17—Construction—Special Trade Contractors		
1711	Plumbing, Heating, and Air-Conditioning.	$7.0
1721	Painting and Paper Hanging	$7.0
1731	Electrical Work	$7.0
1741	Masonry, Stone Setting, and Other Stone Work.	$7.0
1742	Plastering, Drywall, Acoustical and Insulation Work.	$7.0
1743	Terrazzo, Tile, Marble, and Mosaic Work.	$7.0
1751	Carpentry Work	$7.0
1752	Floor Laying and Other Floor Work, N.E.C.	$7.0
1761	Roofing, Siding, and Sheet Metal Work.	$7.0
1771	Concrete Work	$7.0
1781	Water Well Drilling	$7.0
1791	Structural Steel Erection	$7.0
1793	Glass and Glazing Work	$7.0
1794	Excavation Work	$7.0
1795	Wrecking and Demolition Work	$7.0
1796	Installation or Erection of Building Equipment, N.E.C.	$7.0
1799	Special Trade Contractors, N.E.C.	$7.0
	Base Housing Maintenance.[17]	$7.0
DIVISION D—MANUFACTURING [3]		
Major Group 20—Food and Kindred Products		
2011	Meat Packing Plants	500
2013	Sausages and Other Prepared Meat Products.	500
2015*	Poultry Slaughtering and Processing.	500
2021	Creamery Butter	500
2022	Natural, Processed, and Imitation Cheese.	500
2023	Dry, Condensed, and Evaporated Dairy Products.	500
2024	Ice Cream and Frozen Desserts.	500
2026	Fluid Milk	500
2032	Canned Specialties	1,000
2033	Canned Fruits, Vegetables, Preserves, Jams, and Jellies.[4]	500
2034	Dried and Dehydrated Fruits, Vegetables, and Soup Mixes.	500
2035	Pickled Fruits and Vegetables, Vegetable Sauces and Seasonings, and Salad Dressings.	500
2037	Frozen Fruits, Fruit Juices, and Vegetables.	500
2038	Frozen Specialties, N.E.C	500
2041	Flour and Other Grain Mill Products.	500
2043	Cereal Breakfast Foods	1,000
2044	Rice Milling	500
2045	Prepared Flour Mixes and Doughs.	500
2046	Wet Corn Milling	750
2047	Dog and Cat Food	500
2048	Prepared Feeds and Feed Ingredients for Animals and Fowls, Except Dogs and Cats.	500
2051	Bread and Other Bakery Products, Except Cookies and Crackers.	500
2052	Cookies and Crackers	750
2053*	Frozen Bakery Products, Except Bread.	500
2061	Cane Sugar, Except Refining	500
2062	Cane Sugar Refining	750
2063	Beet Sugar	750
2064*	Candy and Other Confectionery Products.	500
2066	Chocolate and Cocoa Products.	500
2067	Chewing Gum	500
2068*	Salted and Roasted Nuts and Seeds.	500
2074	Cottonseed Oil Mills	500
2075	Soybean Oil Mills	500
2076	Vegetable Oil Mills, Except Corn, Cottonseed, and Soybean.	1,000
2077	Animal and Marine Fats and Oils.	500
2079	Shortening, Table Oils, Margarine, and Other Edible Fats and Oils, N.E.C.	750
2082	Malt Beverages	500
2083	Malt	500
2084	Wines, Brandy, and Brandy Spirits.	500
2085	Distilled and Blended Liquors	750
2086	Bottled and Canned Soft Drinks and Carbonated Waters.	500
2087	Flavoring Extracts and Flavoring Syrups, N.E.C.	500
2091	Canned and Cured Fish and Seafoods.	500
2092	Prepared Fresh or Frozen Fish and Seafoods.	500
2095	Roasted Coffee	500
2096*	Potato Chips, Corn Chips, and Similar Snacks.	500
2097	Manufactured Ice	500
2098	Macaroni, Spaghetti, Vermicelli, and Noodles.	500

TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY—Continued

[See footnotes at end of table]

SIC	Description (N.E.C. = Not Elsewhere Classified, * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars
		Final Rule
2099	Food Preparations, N.E.C	500
Major Group 21—Tobacco Products		
2111	Cigarettes	1,000
2121	Cigars	500
2131	Chewing and Smoking Tobacco and Snuff.	500
2141	Tobacco Stemming and Redrying.	500
Major Group 22—Textile Mill Products		
2211	Broadwoven Fabric Mills, Cotton.	1,000
2221	Broadwoven Fabric Mills, Manmade Fiber and Silk.	500
2231	Broadwoven Fabric Mills, Wool (Including Dyeing and Finishing).	500
2241	Narrow Fabric and Other Smallwares Mills: Cotton, Wool, Silk and Manmade Fiber.	500
2251	Women's Full-Length and Knee-Length Hosiery, Except Socks.	500
2252	Hosiery, N.E.C	500
2253	Knit Outerwear Mills	500
2254	Knit Underwear and Nightwear Mills.	500
2257	Weft Knit Fabric Mills	500
2258	Lace and Warp Knit Fabric Mills.	500
2259	Knitting Mills, N.E.C	500
2261	Finishers of Broadwoven Fabrics of Cotton.	1,000
2262	Finishers of Broadwoven Fabrics of Manmade Fiber and Silk.	500
2269	Finishers of Textiles, N.E.C	500
2273 *	Carpets and Rugs	500
2281	Yarn Spinning Mills	500
2282	Yarn Texturizing, Throwing, Twisting, and Winding Mills.	500
2284	Thread Mills	500
2295	Coated Fabrics, Not Rubberized.	1,000
2296	Tire Cord and Fabrics	1,000
2297	Nonwoven Fabrics	500
2298	Cordage and Twine	500
2299	Textile Goods, N.E.C	500
Major Group 23—Apparel and Other Finished Products Made From Fabrics and Similar Materials		
2311	Men's and Boys' Suits, Coats and Overcoats.	500
2321	Men's and Boys' Shirts, Except Work Shirts.	500
2322	Men's and Boys' Underwear and Nightwear.	500
2323	Men's and Boys' Neckwear	500
2325*	Men's and Boys' Separate Trousers and Slacks.	500
2326*	Men's and Boys' Work Clothing.	500
2329	Men's and Boys' Clothing, N.E.C.	500
2331	Women's, Misses', and Junior's Blouses and Shirts.	500
2335	Women's, Misses', and Juniors' Dresses.	500
2337	Women's, Misses', and Juniors' Suits, Skirts, and Coats.	500
2339	Women's, Misses', and Juniors' Outerwear, N.E.C.	500
2341	Women's, Misses', Children's, and Infants' Underwear and Nightwear.	500
2342	Brassieres, Girdles, and Allied Garments.	500
2353*	Hats, Caps, and Millinery	500
2361	Girls', Children's, and Infants' Dresses, Blouses, and Shirts.	500
2369	Girls', Children's, and Infants' Outerwear, N.E.C.	500
2371	Fur Goods	500
2381	Dress and Work Gloves, Except Knit and All-Leather.	500
2384	Robes and Dressing Gowns	500
2385	Waterproof Outerwear	500
2386	Leather and Sheep-Lined Clothing.	500
2387	Apparel Belts	500
2389	Apparel and Accessories, N.E.C.	500
2391	Curtains and Draperies	500
2392	Housefurnishings, Except Curtains and Draperies.	500
2393	Textile Bags	500
2394	Canvas and Related Products	500
2395	Pleating, Decorative and Novelty Stitching, and Tucking for the Trade.	500
2396	Automotive Trimmings, Apparel Findings, and Related Products.	500
2397	Schiffli Machine Embroideries	500
2399	Fabricated Textile Products, N.E.C.	500
Major Group 24—Lumber and Wood Products, Except Furniture		
2411	Logging	500
2421	Sawmills and Planing Mills, General.	500
2426	Hardwood Dimension and Flooring Mills.	500

TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY—Continued

[See footnotes at end of table]

SIC	Description (N.E.C. = Not Elsewhere Classified, * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars
		Final Rule
2429	Special Product Sawmills, N.E.C.	500
2431	Millwork	500
2434	Wood Kitchen Cabinets	500
2435	Hardwood Veneer and Plywood.	500
2436	Softwood Veneer and Plywood	500
2439	Structural Wood Members, N.E.C.	500
2441	Nailed and Lock Corner Wood Boxes and Shook.	500
2448	Wood Pallets and Skids	500
2449	Wood Containers, N.E.C	500
2451	Mobile Homes	500
2452	Prefabricated Wood Buildings and Components.	500
2491	Wood Preserving	500
2493*	Reconstituted Wood Products	500
2499	Wood Products, N.E.C.	500
	Major Group 25—Furniture and Fixtures	
2511	Wood Household Furniture, Except Upholstered.	500
2512	Wood Household Furniture, Upholstered.	500
2514	Metal Household Furniture	500
2515	Mattresses, Foundations, and Convertible Beds.	500
2517	Wood Television, Radio, Phonograph, and Sewing Machine Cabinets.	500
2519	Household Furniture, N.E.C	500
2521	Wood Office Furniture	500
2522	Office Furniture, Except Wood	500
2531	Public Building and Related Furniture.	500
541	Wood Office and Store Fixtures, Partitions, Shelving, and Lockers.	500
542	Office and Store Fixtures, Partitions, Shelving, and Lockers, Except Wood.	500
591	Drapery Hardware and Window Blinds and Shades.	500
599	Furniture and Fixtures, N.E.C	500
	Major Group 26—Paper and Allied Products	
611	Pulp Mills	750
621	Paper Mills	750
631	Paperboard Mills	750
652	Setup Paperboard Boxes	500
653	Corrugated and Solid Fiber Boxes.	500
655	Fiber Cans, Tubes, Drums, and Similar Products.	500
656*	Sanitary Food Containers, Except Folding.	750
657*	Folding Paperboard Boxes, Including Sanitary.	750

TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY—Continued

[See footnotes at end of table]

SIC	Description (N.E.C. = Not Elsewhere Classified, * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars
		Final Rule
2671*	Packaging Paper and Plastics Film, Coated and Laminated.	500
2672*	Coated and Laminated Paper, N.E.C.	500
2673*	Plastics, Foil, and Coated Paper Bags.	500
2674*	Uncoated Paper and Multiwall Bags.	500
2675*	Die-Cut Paper and Paperboard and Cardboard.	500
2676*	Sanitary Paper Products	500
2677*	Envelopes	500
2678*	Stationery, Tablets, and Related Products.	500
2679*	Converted Paper and Paperboard Products, N.E.C.	500
	Major Group 27—Printing, Publishing, and Allied Industries	
2711	Newspapers: Publishing, or Publishing and Printing.	500
2721	Periodicals: Publishing, or Publishing and Printing.	500
2731	Books: Publishing, or Publishing and Printing.	500
2732	Book Printing	500
2741	Miscellaneous Publishing	500
2752	Commercial Printing, Lithographic.	500
2754	Commercial Printing, Gravure	500
2759*	Commercial Printing, N.E.C.	500
2761	Manifold Business Forms	500
2771	Greeting Cards	500
2782	Blankbooks, Looseleaf Binders and Devices.	500
2789	Bookbinding and Related Work	500
2791	Typesetting	500
2796*	Platemaking and Related Services.	500
	Major Group 28—Chemicals and Allied Products	
2812	Alkalies and Chlorine	1,000
2813	Industrial Gases	1,000
2816	Inorganic Pigments	1,000
2819	Industrial Inorganic Chemicals, N.E.C.	1,000
2821	Plastics Materials, Synthetic Resins, and Nonvulcanizable Elastomers.	750
2822	Synthetic Rubber (Vulcanizable Elastomers).	1,000
2823	Cellulosic Manmade Fibers	1,000
2824	Manmade Organic Fibers, Except Cellulosic.	1,000
2833	Medicinal Chemicals and Botanical Products.	750
2834	Pharmaceutical Preparations	750
2835*	In Vitro and In Vivo Diagnostic Substances.	500

TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY—Continued

[See footnotes at end of table]

SIC	Description (N.E.C. = Not Elsewhere Classified, * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars
		Final Rule
2836*	Biological Products, Except Diagnostic Substances.	500
2841	Soap and Other Detergents, Except Specialty Cleaners.	750
2842	Specialty Cleaning, Polishing, and Sanitation Preparations.	500
2843	Surface Active Agents, Finishing Agents, Sulfonated Oils, and Assistants.	500
2844	Perfumes, Cosmetics, and Other Toilet Preparations.	500
2851	Paints, Varnishes, Lacquers, Enamels, and Allied Products.	500
2861	Gum and Wood Chemicals	500
2865	Cyclic Organic Crudes and Intermediates, and Organic Dyes and Pigments.	750
2869	Industrial Organic Chemicals, N.E.C.	1,000
2873	Nitrogenous Fertilizers	1,000
2874	Phosphatic Fertilizers	500
2875	Fertilizers, Mixing Only	500
2879	Pesticides and Agricultural Chemicals, N.E.C.	500
2891	Adhesives and Sealants	500
2892	Explosives	750
2893	Printing Ink	500
2895	Carbon Black	500
2899	Chemicals and Chemical Preparations, N.E.C.	500
Major Group 29—Petroleum Refining and Related Industries		
2911	Petroleum Refining [5]	1,500
2951	Asphalt Paving Mixtures and Blocks.	500
2952	Asphalt Felts and Coatings	750
2992	Lubricating Oils and Greases	500
2999	Products of Petroleum and Coal, N.E.C.	500
Major Group 30—Rubber and Miscellaneous Plastics Products		
3011	Tires and Inner Tubes.[6]	1,000
3021	Rubber and Plastics Footwear	1,000
3052*	Rubber and Plastics Hose and Belting.	500
3053*	Gaskets, Packing, and Sealing Devices.	500
3061*	Molded, Extruded, and Lathe-Cut Mechanical Rubber Goods.	500
3069	Fabricated Rubber Products, N.E.C.	500
3081*	Unsupported Plastics Film and Sheet.	500
3082*	Unsupported Plastics Profile Shapes.	500
3083*	Laminated Plastics Plate, Sheet, and Profile Shapes.	500
3084*	Plastics Pipe	500
3085*	Plastics Bottles	500
3086*	Plastics Foam Products	500
3087*	Custom Compounding of Purchased Plastics Resins.	500
3088*	Plastics Plumbing Fixtures	500
3089*	Plastics Products, N.E.C.	500
Major Group 31—Leather and Leather Products		
3111	Leather Tanning and Finishing	500
3131	Boot and Shoe Cut Stock and Findings.	500
3142	House Slippers	500
3143	Men's Footwear, Except Athletic.	500
3144	Women's Footwear, Except Athletic.	500
3149	Footwear, Except Rubber, N.E.C.	500
3151	Leather Gloves and Mittens	500
3161	Luggage	500
3171	Women's Handbags and Purses.	500
3172	Personal Leather Goods, Except Women's Handbags and Purses.	500
3199	Leather Goods, N.E.C.	500
Major Group 32—Stone, Clay, Glass, and Concrete Products		
3211	Flat Glass	1,000
3221	Glass Containers	750
3229	Pressed and Blown Glass and Glassware, N.E.C.	750
3231	Glass Products, Made of Purchased Glass.	500
3241	Cement, Hydraulic	750
3251	Brick and Structural Clay Tile	500
3253	Ceramic Wall and Floor Tile	500
3255	Clay Refractories	500
3259	Structural Clay Products, N.E.C.	500
3261	Vitreous China Plumbing Fixtures and China and Earthenware Fittings and Bathroom Accessories.	750
3262	Vitreous China Table and Kitchen Articles.	500
3263	Fine Earthenware (Whiteware) Table and Kitchen Articles.	500
3264	Porcelain Electrical Supplies	500
3269	Pottery Products, N.E.C.	500
3271	Concrete Block and Brick	500
3272	Concrete Products, Except Block and Brick.	500
3273	Ready Mixed Concrete	500
3274	Lime	500
3275	Gypsum Products	1,000

TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY—Continued

[See footnotes at end of table]

SIC	Description (N.E.C. = Not Elsewhere Classified, * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars
		Final Rule
3281	Cut Stone and Stone Products	500
3291	Abrasive Products	500
3292	Asbestos Products	750
3295	Minerals and Earths, Ground or Otherwise Treated.	500
3296	Mineral Wool	750
3297	Nonclay Refractories	750
3299	Nonmetallic Mineral Products, N.E.C.	500
Major Group 33—Primary Metal Industries		
3312	Steel Works, Blast Furnaces (Including Coke Ovens), and Rolling Mills.	1,000
3313	Electrometallurgical Products, Except Steel.	750
3315	Steel Wiredrawing and Steel Nails and Spikes.	1,000
3316	Cold-Rolled Steel Sheet, Strip, and Bars.	1,000
3317	Steel Pipe and Tubes	1,000
3321	Gray and Ductile Iron Foundries.	500
3322	Malleable Iron Foundries	500
3324	Steel Investment Foundries	500
3325	Steel Foundries, N.E.C	500
3331	Primary Smelting and Refining of Copper.	1,000
3334	Primary Production of Aluminum.	1,000
3339	Primary Smelting and Refining of Nonferrous Metals, Except Copper and Aluminum.	750
3341	Secondary Smelting and Refining of Nonferrous Metals.	500
3351	Rolling, Drawing, and Extruding of Copper.	750
3353	Aluminum Sheet, Plate, and Foil.	750
3354	Aluminum Extruded Products	750
3355	Aluminum Rolling and Drawing, N.E.C.	750
3356	Rolling, Drawing, and Extruding of Nonferrous Metals, Except Copper and Aluminum.	750
3357	Drawing and Insulating of Nonferrous Wire.	1,000
3363*	Aluminum Die-Castings	500
3364*	Nonferrous Die-Castings, Except Aluminum.	500
3365*	Aluminum Foundries	500
3366*	Copper Foundries	500
3369	Nonferrous Foundries, Except Aluminum and Copper.	500
3398	Metal Heat Treating	750
3399	Primary Metal Products, N.E.C	750

TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY—Continued

[See footnotes at end of table]

SIC	Description (N.E.C. = Not Elsewhere Classified, * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars
		Final Rule
Major Group 34—Fabricated Metal Products, Except Machinery and Transportation Equipment		
3411	Metal Cans	1,000
3412	Metal Shipping Barrels, Drums, Kegs, and Pails.	500
3421	Cutlery	500
3423	Hand and Edge Tools, Except Machine Tools and Handsaws.	500
3425	Saw Blades and Handsaws	500
3429	Hardware, N.E.C	500
3431	Enameled Iron and Metal Sanitary Ware.	750
3432	Plumbing Fixture Fittings and Trim.	500
3433	Heating Equipment, Except Electric and Warm Air Furnaces.	500
3441	Fabricated Structural Metal	500
3442	Metal Doors, Sash, Frames, Molding, and Trim.	500
3443	Fabricated Plate Work (Boiler Shops).	500
3444	Sheet Metal Work	500
3446	Architectural and Ornamental Metal Work.	500
3448	Prefabricated Metal Buildings and Components.	500
3449	Miscellaneous Structural Metal Work.	500
3451	Screw Machine Products	500
3452	Bolts, Nuts, Screws, Rivets, and Washers.	500
3462	Iron and Steel Forgings	500
3463	Nonferrous Forgings	500
3465	Automotive Stampings	500
3466	Crowns and Closures	500
3469	Metal Stampings, N.E.C	500
3471	Electroplating, Plating, Polishing, Anodizing, and Coloring.	500
3479	Coating, Engraving, and Allied Services, N.E.C.	500
3482	Small Arms Ammunition	1,000
3483	Ammunition, Except for Small Arms.	1,500
3484	Small Arms	1,000
3489	Ordnance and Accessories, N.E.C.	500
3491*	Industrial Valves	500
3492*	Fluid Power Valves and Hose Fittings.	500
3493	Steel Springs, Except Wire	500
3494	Valves and Pipe Fittings, N.E.C.	500
3495	Wire Springs	500
3496	Miscellaneous Fabricated Wire Products.	500
3497	Metal Foil and Leaf	500
3498	Fabricated Pipe and Pipe Fittings.	500

TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY—Continued

[See footnotes at end of table]

SIC	Description (N.E.C. = Not Elsewhere Classified, * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars
		Final Rule
3499	Fabricated Metal Products, N.E.C	500
	Major Group 35—Industrial and Commercial Machinery and Computer Equipment	
3511	Steam, Gas, and Hydraulic Turbines, and Turbine Generator Set Units	1,000
3519	Internal Combustion Engines, N.E.C.	1,000
3523	Farm Machinery and Equipment.	500
3524	Lawn and Garden Tractors and Home Lawn and Garden Equipment.	500
3531	Construction Machinery and Equipment.	750
3532	Mining Machinery and Equipment, Except Oil and Gas Field Machinery and Equipment.	500
3533	Oil and Gas Field Machinery and Equipment.	500
3534	Elevators and Moving Stairways.	500
3535	Conveyors and Conveying Equipment.	500
3536	Overhead Traveling Cranes, Hoists, and Monorail Systems.	500
3537	Industrial Trucks, Tractors, Trailers, and Stackers.	750
3541	Machine Tools, Metal Cutting Types.	500
3542	Machine Tools, Metal Forming Types	500
3543*	Industrial Patterns	500
3544	Special Dies and Tools, Die Sets, Jigs and Fixtures, and Industrial Molds.	500
3545	Cutting Tools, Machine Tool Accessories, and Machinists' Precision Measuring Devices.	500
3546	Power-Driven Handtools	500
3547	Rolling Mill Machinery and Equipment.	500
3548*	Electric and Gas Welding and Soldering Equipment.	500
3549	Metalworking Machinery, N.E.C.	500
3552	Textile Machinery	500
3553	Woodworking Machinery	500
3554	Paper Industries Machinery	500
3555	Printing Trades Machinery and Equipment.	500
3556*	Food Products Machinery	500
3559	Special Industry Machinery, N.E.C.	500
3561	Pumps and Pumping Equipment.	500
3562	Ball and Roller Bearings	750
3563	Air and Gas Compressors	500
3564	Industrial and Commercial Fans and Blowers and Air Purification Equipment.	500
3565*	Packaging Machinery	500
3566	Speed Changers, Industrial High-Speed Drives, and Gears.	500
3567	Industrial Process Furnaces and Ovens.	500
3568	Mechanical Power Transmission Equipment, N.E.C.	500
3569	General Industrial Machinery and Equipment, N.E.C.	500
3571*	Electronic Computers	1,000
3572*	Computer Storage Devices	1,000
3575*	Computer Terminals	1,000
3577*	Computer Peripheral Equipment, N.E.C.	1,000
3578*	Calculating and Accounting Machines, Except Electronic Computers.	1,000
3579	Office Machines, N.E.C.	500
3581	Automatic Vending Machines	500
3582	Commercial Laundry, Drycleaning, and Pressing Machines.	500
3585	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment.	750
3586	Measuring and Dispensing Pumps.	500
3589	Service Industry Machinery, N.E.C.	500
3592	Carburetors, Pistons, Piston Rings, and Valves.	500
3593*	Fluid Power Cylinders and Actuators.	500
3594*	Fluid Power Pumps and Motors.	500
3596*	Scales and Balances, Except Laboratory.	500
3599	Industrial and Commercial Machinery and Equipment, N.E.C.	500
	Major Group 36—Electronic and Other Electrical Equipment and Components, Except Computer Equipment	
3612	Power, Distribution, and Specialty Transformers.	750
3613	Switchgear and Switchboard Apparatus.	750
3621	Motors and Generators	1,000
3624	Carbon and Graphite Products	750
3625*	Relays and Industrial Controls	750
3629	Electrical Industrial Apparatus, N.E.C.	500
3631	Household Cooking Equipment	750

TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY—Continued

[See footnotes at end of table]

SIC	Description (N.E.C. = Not Elsewhere Classified, * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars
		Final Rule
3632	Household Refrigerators and Home and Farm Freezers.	1,000
3633	Household Laundry Equipment	1,000
3634	Electric Housewares and Fans	750
3635	Household Vacuum Cleaners	750
3639	Household Appliances, N.E.C	500
3641	Electric Lamp Bulbs and Tubes.	1,000
3643	Current-Carrying Wiring Devices.	500
3644	Noncurrent-Carrying Wiring Devices.	500
3645	Residential Electric Lighting Fixtures.	500
3646	Commercial, Industrial, and Institutional Electric Lighting Fixtures.	500
3647	Vehicular Lighting Equipment	500
3648	Lighting Equipment, N.E.C.	500
3651	Household Audio and Video Equipment.	750
3652	Phonograph Records and Prerecorded Audio Tapes and Disks.	750
3661	Telephone and Telegraph Apparatus.	1,000
3663*	Radio and Television Broadcasting and Communications Equipment.	750
3669*	Communications Equipment, N.E.C	750
3671	Electron Tubes	750
3672*	Printed Circuit Boards	500
3674	Semiconductors and Related Devices.	500
3675	Electronic Capacitors	500
3676	Electronic Resistors	500
3677	Electronic Coils, Transformers, and Other Inductors.	500
3678	Electronic Connectors	500
3679	Electronic Components, N.E.C.	500
3691	Storage Batteries	500
3692	Primary Batteries, Dry and Wet	1,000
3694	Electrical Equipment for Internal Combustion Engines.	750
3695*	Magnetic and Optical Recording Media.	1,000
3699	Electrical Machinery, Equipment, and Supplies, N.E.C	750
	Major Group 37—Transportation	
3711	Motor Vehicles and Passenger Car Bodies.	1,000
3713	Truck and Bus Bodies	500
3714	Motor Vehicle Parts and Accessories.	500
3715	Truck Trailers	500
3716	Motor Homes	1,000
3721	Aircraft	1,500
3724	Aircraft Engines and Engine Parts.	1,000
3728	Aircraft Parts and Auxiliary Equipment, N.E.C.[18]	1,000
3731	Ship Building and Repairing	1,000
3732	Boat Building and Repairing	500
3743	Railroad Equipment	1,000
3751	Motorcycles, Bicycles, and Parts.	500
3761	Guided Missiles and Space Vehicles.	1,000
3764	Guided Missiles and Space Vehicle Propulsion Units and Propulsion Unit Parts.	1,000
3769	Guided Missile and Space Vehicle Parts and Auxiliary Equipment, N.E.C.	1,000
3792	Travel Trailers and Campers	500
3795	Tanks and Tank Components	1,000
3799	Transportation Equipment, N.E.C	500
	Major Group 38—Measuring, Analyzing, and Controlling Instruments; Photographic, Medical, and Optical Goods; Watches and Clocks	
3812*	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instruments.	750
3821*	Laboratory Apparatus and Furniture.	500
3822	Automatic Controls for Regulating Residential and Commercial Environments and Appliances.	500
3823	Industrial Instruments for Measurement, Display, and Control of Process Variables; and Related Products.	500
3824	Totalizing Fluid Meters and Counting Devices.	500
3825	Instruments for Measuring and Testing of Electricity and Electrical Signals.	500
3826*	Laboratory Analytical Instruments.	500
3827*	Optical Instruments and Lenses.	500
3829	Measuring and Controlling Devices, N.E.C.	500
3841	Surgical and Medical Instruments and Apparatus.	500
3842	Orthopedic, Prosthetic, and Surgical Appliances and Supplies.	500
3843	Dental Equipment and Supplies.	500
3844*	X-Ray Apparatus and Tubes and Related Irradiation Apparatus.	500

TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY—Continued

[See footnotes at end of table]

SIC	Description (N.E.C. = Not Elsewhere Classified, * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars
		Final Rule
3845*	Electromedical and Electrotherapeutic Apparatus.	500
3851	Ophthalmic Goods	500
3861	Photographic Equipment and Supplies.	500
3873	Watches, Clocks, Clockwork Operated Devices, and Parts.	500
Major Group 39—Miscellaneous Manufacturing Industries		
3911	Jewelry, Precious Metal	500
3914	Silverware, Plated Ware, and Stainless Steel Ware.	500
3915	Jewelers' Findings and Materials, and Lapidary Work.	500
3931	Musical Instruments	500
3942	Dolls and Stuffed Toys	500
3944	Games, Toys, and Children's Vehicles, Except Dolls and Bicycles.	500
3949	Sporting and Athletic Goods, N.E.C.	500
3951	Pens, Mechanical Pencils, and Parts.	500
3952	Lead Pencils, Crayons, and Artists' Materials.	500
3953	Marking Devices	500
3955	Carbon Paper and Inked Ribbons.	500
3961	Costume Jewelry and Costume Novelties, Except Precious Metal.	500
3965*	Fasteners, Buttons, Needles, and Pins.	500
3991	Brooms and Brushes	500
3993	Signs and Advertising Specialties.	500
3995	Burial Caskets	500
3996	Linoleum, Asphalted-Felt-Base, and Other Hard Surface Floor Coverings, N.E.C.	750
3999	Manufacturing Industries, N.E.C.	500
DIVISION E—TRANSPORTATION, COMMUNICATIONS, ELECTRIC, GAS, AND SANITARY SERVICES		
Major Group 40—Railroad Transportation		
4011	Railroads, Line-Haul Operating	1,500
4013	Railroad Switching and Terminal Establishments.	500
Major Group 41—Local and Suburban Transit and Interurban Highway Passenger Transportation		
4111	Local and Suburban Transit	$3.5
4119	Local Passenger Transportation, N.E.C.	$3.5
4121	Taxicabs	$3.5
4131	Intercity and Rural Bus Transportation.	$3.5
4141	Local Bus Charter Service	$3.5
4142	Bus Charter Service, Except Local.	$3.5
4151	School Buses	$3.5
4173*	Terminal and Service Facilities for Motor Vehicle Passenger Transportation.	$3.5
Major Group 42—Motor Freight Transportation and Warehousing		
4212	Local Trucking Without Storage.[7]	$12.5
4213	Trucking, Except Local	$12.5
4214	Local Trucking With Storage	$12.5
4215*	Courier Services, Except by Air	$12.5
4221	Farm Product Warehousing and Storage.	$12.5
4222	Refrigerated Warehousing and Storage.	$12.5
4225	General Warehousing and Storage.	$12.5
4226	Special Warehousing and Storage, N.E.C.	$12.5
4231	Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation.	$3.5
Major Group 44—Water Transportation [8]		
4412*	Deep Sea Foreign Transportation of Freight.	500
4424*	Deep Sea Domestic Transportation of Freight.	500
4432*	Freight Transportation on the Great Lakes—St. Lawrence Seaway.	500
4449*	Water Transportation of Freight, N.E.C.	500
4481*	Deep Sea Transportation of Passengers, Except by Ferry.	500
4482*	Ferries	500
4489*	Water Transportation of Passengers, N.E.C.	500
4491*	Marine Cargo Handling	$12.5
4492*	Towing and Tugboat Services	$3.5
4493*	Marinas	$3.5
4499*	Water Transportation Services, N.E.C.	$3.5
Major Group 45—Transportation by Air [8]		
4512*	Air Transportation, Scheduled	[9] 1,500
4513*	Air Courier Services	[9] 1,500
4522*	Air Transportation, Nonscheduled.	[9] 1,500
4581*	Airports, Flying Fields, and Airport Terminal Services.	$3.5

TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY—Continued

[See footnotes at end of table]

SIC	Description (N.E.C. = Not Elsewhere Classified, * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars
		Final Rule
	Major Group 46—Pipelines, Except Natural Gas	
4612	Crude Petroleum Pipelines	1,500
4613	Refined Petroleum Pipelines	1,500
4619	Pipelines, N.E.C.	$17.0
	Major Group 47—Transportation Services	
4724*	Travel Agencies	$0.5
4725*	Tour Operators	$3.5
4729*	Arrangement of Passenger Transportation, N.E.C.	$3.5
4731*	Arrangement of Transportation of Freight and Cargo.	$12.5
4741*	Rental of Railroad Cars	$3.5
4783	Packing and Crating	$12.5
4785*	Fixed Facilities and Inspection and Weighing Services for Motor Vehicle Transportation.	$3.5
4789	Transportation Services, N.E.C.	$3.5
	Major Group 48—Communications	
4812*	Radiotelephone Communications.	1,500
4813*	Telephone Communications, Except Radiotelephone.	1,500
4832	Radio Broadcasting Stations	$3.5
4833	Television Broadcasting Stations.	$7.0
4841*	Cable and Other Pay Television Services.	$7.5
4899	Communications Services, N.E.C.	$7.5
	Major Group 49—Electric, Gas, and Sanitary Services	
4911	Electric Services	4 million megawatt hrs.
4924	Natural Gas Distribution	$500
4941	Water Supply	$3.5
4952	Sewerage Systems	$3.5
4953	Refuse Systems[11]	$6.0
4959	Sanitary Services, N.E.C.	$3.5
4961	Steam and Air-Conditioning Supply.	$6.0
4971	Irrigation Systems	$3.5
	DIVISION F—WHOLESALE TRADE	
	Major Group 50—Wholesale Trade—Durable Goods	
5012	Automobiles and Other Motor Vehicles.	100
5013	Motor Vehicle Supplies and New Parts.	100
5014	Tires and Tubes	100
5015*	Motor Vehicle Parts, Used	100
5021	Furniture	100
5023	Homefurnishings	100
5031	Lumber, Plywood, Millwork, and Wood Panels.	100
5032*	Brick, Stone, and Related Construction Materials.	100
5033*	Roofing, Siding, and Insulation Materials.	100
5039	Construction Materials, N.E.C.	100
5043	Photographic Equipment and Supplies.	100
5044*	Office Equipment	100
5045*	Computers and Computer Peripheral Equipment and Software.	100
5046*	Commercial Equipment, N.E.C.	100
5047*	Medical, Dental, and Hospital Equipment and Supplies.	100
5048*	Ophthalmic Goods	100
5049*	Professional Equipment and Supplies, N.E.C.	100
5051	Metals Service Centers and Offices.	100
5052	Coal and Other Minerals and Ores.	100
5063	Electrical Apparatus and Equipment, Wiring Supplies, and Construction Materials.	100
5064	Electrical Appliances, Television and Radio Sets.	100
5065	Electronic Parts and Equipment, N.E.C.	100
5072	Hardware	100
5074	Plumbing and Heating Equipment and Supplies (Hydronics).	100
5075	Warm Air Heating and Air-Conditioning Equipment and Supplies.	100
5078	Refrigeration Equipment and Supplies.	100
5082	Construction and Mining (Except Petroleum) Machinery and Equipment.	100
5083	Farm and Garden Machinery and Equipment.	100
5084	Industrial Machinery and Equipment.	100
5085	Industrial Supplies	100
5087	Service Establishment Equipment and Supplies.	100
5088	Transportation Equipment and Supplies, Except Motor Vehicles.	100
5091*	Sporting and Recreational Goods and Supplies.	100
5092*	Toys and Hobby Goods and Supplies.	100
5093	Scrap and Waste Materials	100
5094	Jewelry, Watches, Precious Stones, and Precious Metals.	100
5099	Durable Goods, N.E.C.	100

TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY—Continued

[See footnotes at end of table]

SIC	Description (N.E.C. = Not Elsewhere Classified, * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars
		Final Rule
	Major Group 51—Wholesale Trade—Nondurable Goods	
5111	Printing and Writing Paper	100
5112	Stationery and Office Supplies	100
5113	Industrial and Personal Service Paper.	100
5122	Drugs, Drug Proprietaries, and Druggists' Sundries.	100
5131*	Piece Goods, Notions, and Other Dry Goods.	100
5136	Men's and Boys' Clothing and Furnishings.	100
5137	Women's, Children's, and Infants' Clothing and Accessories.	100
5139	Footwear	100
5141	Groceries, General Line	100
5142	Packaged Frozen Foods	100
5143	Dairy Products, Except Dried or Canned.	100
5144	Poultry and Poultry Products	100
5145	Confectionery	100
5146	Fish and Seafoods	100
5147	Meats and Meat Products	100
5148	Fresh Fruits and Vegetables	100
5149	Groceries and Related Products, N.E.C.	100
5153	Grain and Field Beans	100
5154	Livestock	100
5159	Farm-Product Raw Materials, N.E.C.	100
5162*	Plastics Materials and Basic Forms and Shapes.	100
5169*	Chemicals and Allied Products, N.E.C.	100
5171	Petroleum Bulk Stations and Terminals.	100
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals.	100
5181	Beer and Ale	100
5182	Wine and Distilled Alcoholic Beverages.	100
5191	Farm Supplies	100
5192*	Books, Periodicals, and Newspapers.	100
5193*	Flowers, Nursery Stock, and Florists' Supplies.	100
5194	Tobacco and Tobacco Products.	100
5198	Paints, Varnishes, and Supplies.	100
5199	Nondurable Goods, N.E.C.	100
	DIVISION G—RETAIL TRADE	
	Major Group 52—Building Materials, Hardware, Garden Supply, and Mobile Home Dealers	
5211	Lumber and Other Building Materials Dealers.	$3.5
5231	Paint, Glass, and Wallpaper Stores.	$3.5
5251	Hardware Stores	$3.5
5261	Retail Nurseries, Lawn and Garden Supply Stores.	$3.5
5271	Mobile Home Dealers	$6.5
	Major Group 53—General Merchandise Stores	
5311	Department Stores	$13.5
5331	Variety Stores	$5.5
5399	Miscellaneous General Merchandise Stores.	$3.5
	Major Group 54—Food Stores	
5411	Grocery Stores	$13.5
5421*	Meat and Fish (Seafood) Markets, Including Freezer Provisioners.	$3.5
5431	Fruit and Vegetable Markets	$3.5
5441	Candy, Nut, and Confectionery Stores.	$3.5
5451	Dairy Products Stores	$3.5
5461*	Retail Bakeries	$3.5
5499	Miscellaneous Food Stores	$3.5
	Major Group 55—Automotive Dealers and Gasoline Service Stations	
5511	Motor Vehicle Dealers (New and Used).	$11.5
5521	Motor Vehicle Dealers (Used Only).	$11.5
5531	Auto and Home Supply Stores	$3.5
5541	Gasoline Service Stations	$4.5
5551	Boat Dealers	$3.5
5561	Recreational Vehicle Dealers	$3.5
5571	Motorcycle Dealers	$3.5
5599	Automotive Dealers, N.E.C.[12]	$3.5
	Major Group 56—Apparel and Accessory Stores	
5611	Men's and Boys' Clothing and Accessory Stores.	$4.5
5621	Women's Clothing Stores	$4.5
5632*	Women's Accessory and Specialty Stores.	$3.5
5641	Children's and Infants' Wear Stores.	$3.5
5651	Family Clothing Stores	$4.5
5661	Shoe Stores	$4.5

TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY—Continued

[See footnotes at end of table]

SIC	Description (N.E.C. = Not Elsewhere Classified, * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars
		Final Rule
5699	Miscellaneous Apparel and Accessory Stores	$3.5
	Major Group 57—Home Furniture, Furnishings, and Equipment Stores	
5712	Furniture Stores	$3.5
5713	Floor Covering Stores	$3.5
5714	Drapery, Curtain, and Upholstery Stores.	$3.5
5719	Miscellaneous Homefurnishings Stores.	$3.5
5722	Household Appliance Stores	$4.5
5731*	Radio, Television, and Consumer Electronics Stores	$4.5
5734*	Computer and Computer Software Stores.	$4.5
5735*	Record and Prerecorded Tape Stores.	$3.5
5736*	Musical Instrument Stores	$3.5
	Major Group 58—Eating and Drinking Places	
5812	Eating Places, Except Food Service, Institutional.	$3.5
5812	Food Service, Institutional	$10.0
5813	Drinking Places (Alcoholic Beverages).	$3.5
	Major Group 59—Miscellaneous Retail	
5912	Drug Stores and Proprietary Stores.	$3.5
5921	Liquor Stores	$3.5
5932*	Used Merchandise Stores	$3.5
5941	Sporting Goods Stores and Bicycle Shops.	$3.5
5942	Book Stores	$3.5
5943	Stationery Stores	$3.5
5944	Jewelry Stores	$3.5
5945	Hobby, Toy, and Game Shops	$3.5
5946	Camera and Photographic Supply Stores.	$3.5
5947	Gift, Novelty, and Souvenir Shops.	$3.5
5948	Luggage and Leather Goods Stores.	$3.5
5949	Sewing, Needlework, and Piece Goods Stores.	$3.5
5961	Catalog and Mail-Order Houses.	$12.5
5962	Automatic Merchandising Machine Operators.	$3.5
5963	Direct Selling Establishments	$3.5
5983	Fuel Oil Dealers	$6.0
5984	Liquefied Petroleum Gas (Bottled Gas) Dealers.	$3.5
5989*	Fuel Dealers, N.E.C	$3.5
5992	Florists	$3.5
5993	Tobacco Stores and Stands	$3.5
5994	News Dealers and Newsstands.	$3.5
5995*	Optical Goods Stores	$3.5
5999	Miscellaneous Retail Stores, N.E.C.	$3.5
	DIVISION H—FINANCE, INSURANCE, AND REAL ESTATE [13]	
	Major Group 60—Depository Institutions	
6021*	National Commercial Banks	[14] $100 Million
6022	State Commercial Banks	[14] $100 Million
6029*	Commercial Banks, N.E.C	[14] $100 Million
6035*	Savings Institutions, Federally Chartered.	[14] $100 Million
6036*	Savings Institutions, Not Federally Chartered.	$100 Million [14]
	Major Group 62—Security and Commodity Brokers, Dealers, Exchanges, and Services	
6221	Commodity Contracts Brokers and Dealers.	$3.5
	Major Group 63—Insurance Carriers	
6331	Fire, Marine, and Casualty Insurance	1,500
	Major Group 64—Insurance Agents, Brokers, and Service	
6411	Insurance Agents, Brokers, and Service	$3.5
	Major Group 65—Real Estate	
6515	Operators of Residential Mobile Home Sites.	$3.5
	Leasing of Building Space to Federal Government by Owners.[15]	$10.0
6531	Real Estate Agents and Managers.	[10] $1.0
	DIVISION I—SERVICES [16]	
	Major Group 70—Hotels, Rooming Houses, Camps, and Other Lodging Places	
7011	Hotels and Motels	$3.5
7021	Rooming and Boarding Houses.	$3.5

TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY—Continued

[See footnotes at end of table]

SIC	Description (N.E.C. = Not Elsewhere Classified, * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars
		Final Rule
7032	Sporting and Recreational Camps.	$3.5
7033	Recreational Vehicle Parks and Campsites.	$3.5
7041	Organization Hotels and Lodging Houses, on Membership Basis.	$3.5
	Major Group 72—Personal Services	
7211	Power Laundries, Family and Commercial.	$7.0
7212	Garment Pressing, and Agents for Laundries and Drycleaners.	$3.5
7213	Linen Supply	$7.0
7215	Coin-Operated Laundries and Drycleaning.	$3.5
7216	Drycleaning Plants, Except Rug Cleaning.	$2.5
7217	Carpet and Upholstery Cleaning.	$2.5
7218	Industrial Launderers	$7.0
7219	Laundry and Garment Services, N.E.C.	$3.5
7221	Photographic Studios, Portrait	$3.5
7231	Beauty Shops	$3.5
7241	Barber Shops	$3.5
7251	Shoe Repair Shops and Shoeshine Parlors.	$3.5
7261	Funeral Service and Crematories.	$3.5
7291*	Tax Return Preparation Services.	$3.5
7299	Miscellaneous Personal Services, N.E.C.	$3.5
	Major Group 73—Business Services	
7311	Advertising Agencies	$3.5
7312	Outdoor Advertising Services	$3.5
7313	Radio, Television, and Publishers' Advertising Representatives.	$3.5
7319	Advertising, N.E.C.	$3.5
7322*	Adjustment and Collection Services.	$3.5
7323*	Credit Reporting Services	$3.5
7331	Direct Mail Advertising Services.	$3.5
7334*	Photocopying and Duplicating Services.	$3.5
7335*	Commercial Photography	$3.5
7336*	Commercial Art and Graphic Design.	$3.5
7338*	Stenographic and Court Reporting Services.	$3.5
7342	Disinfecting and Pest Control Services.	$3.5
7349	Building Cleaning and Maintenance Services, N.E.C.	$8.0
7352*	Medical Equipment Rental and Leasing.	$3.5
7353*	Heavy Construction Equipment Rental and Leasing.	$3.5
7359*	Equipment Rental and Leasing, N.E.C.	$3.5
7361[1]	Employment Agencies	$3.5
7363*	Help Supply Services	$3.5
7371*	Computer Programming Services.	$7.0
7372	Prepackaged Software	$7.0
7373*	Computer Integrated Systems Design.	$7.0
7374	Computer Processing and Data Preparation and Processing Services.	$7.0
7375*	Information Retrieval Services	$7.0
7376*	Computer Facilities Management Services.	$7.0
7377*	Computer Rental and Leasing	$12.5
7378*	Computer Maintenance and Repair.	$12.5
7379	Computer Related Services, N.E.C.	$12.5
7381*	Detective, Guard, and Armored Car Services.	$6.0
7382*	Security Systems Services	$6.0
7383*	News Syndicates	$3.5
7384*	Photofinishing Laboratories	$3.5
7389*	Business Services, N.E.C.	$3.5
	Major Group 75—Automotive Repair, Services, and Parking	
7513	Truck Rental and Leasing, Without Drivers.	$12.5
7514*	Passenger Car Rental	$12.5
7515*	Passenger Car Leasing	$12.5
7519	Utility Trailer and Recreational Vehicle Rental.	$3.5
7521*	Automobile Parking	$3.5
7532*	Top, Body, and Upholstery Repair Shops and Paint Shops.	$3.5
7533*	Automotive Exhaust System Repair Shops.	$3.5
7534	Tire Retreading and Repair Shops.	$7.0
7536*	Automotive Glass Replacement Shops.	$3.5
7537*	Automotive Transmission Repair Shops.	$3.5
7538	General Automotive Repair Shops.	$3.5
7539	Automotive Repair Shops, N.E.C.	$3.5
7542	Carwashes	$3.5
7549	Automotive Servicers, Except Repair and Carwashes.	$3.5

TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY—Continued

[See footnotes at end of table]

SIC	Description (N.E.C. = Not Elsewhere Classified, * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars
		Final Rule
	Major Group 76—Miscellaneous Repair Services	
7622	Radio and Television Repair Shops.	$3.5
7623	Refrigeration and Air-Conditioning Service and Repair Shops.	$3.5
7629	Electrical and Electronic Repair Shops, N.E.C.	$3.5
7631	Watch, Clock, and Jewelry Repair.	$3.5
7641	Reupholstery and Furniture Repair.	$3.5
7692	Welding Repair	$3.5
7694	Armature Rewinding Shops	$3.5
7699	Repair Shops and Related Services, N.E.C.[18]	$3.5
	Major Group 78—Motion Pictures	
7812*	Motion Picture and Video Tape Production.	$14.5
7819	Services Allied to Motion Picture Production.	$14.5
7822*	Motion Picture and Video Tape Distribution.	$14.5
7829	Services Allied to Motion Picture Distribution.	$3.5
7832	Motion Picture Theaters, Except Drive-In.	$3.5
7833	Drive-In Motion Picture Theaters.	$3.5
7841*	Video Tape Rental	$3.5
	Major Group 79—Amusement and Recreation Services	
7911	Dance Studios, Schools, and Halls.	$3.5
7922	Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services.	$3.5
7929	Bands, Orchestras, Actors, and Other Entertainers and Entertainment Groups.	$3.5
7933	Bowling Centers	$3.5
7941	Professional Sports Clubs and Promoters.	$3.5
7991*	Physical Fitness Facilities	$3.5
7993	Coin-Operated Amusement Devices.	$3.5
7996	Amusement Parks	$3.5
7997	Membership Sports and Recreation Clubs.	$3.5
7999	Amusement and Recreation Services, N.E.C.	$3.5
	Major Group 80—Health Services	
8011	Offices and Clinics of Doctors of Medicine.	$3.5

TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY—Continued

[See footnotes at end of table]

SIC	Description (N.E.C. = Not Elsewhere Classified, * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars
		Final Rule
8021	Offices and Clinics of Dentists	$3.5
8031	Offices and Clinics of Doctors of Osteopathy.	$3.5
8041	Offices and Clinics of Chiropractors.	$3.5
8042	Offices and Clinics of Optometrists.	$3.5
8043*	Offices and Clinics of Podiatrists.	$3.5
8049	Offices and Clinics of Health Practitioners, N.E.C.	$3.5
8051	Skilled Nursing Care Facilities	$3.5
8052*	Intermediate Care Facilities	$3.5
8059	Nursing and Personal Care Facilities, N.E.C.	$3.5
8062	General Medical and Surgical Hospitals.	$3.5
8063	Psychiatric Hospitals	$3.5
8069	Specialty Hospitals, Except Psychiatric.	$3.5
8071	Medical Laboratories	$3.5
8072	Dental Laboratories	$3.5
8082*	Home Health Care Services	$3.5
8092*	Kidney Dialysis Centers	$3.5
8093*	Specialty Outpatient Facilities, N.E.C.	$3.5
8099*	Health and Allied Services, N.E.C.	$3.5
	Major Group 81—Legal Services	
8111	Legal Services	$3.5
	Major Group 82—Educational Services	
8211	Elementary and Secondary Schools.	$3.5
8221	Colleges, Universities, and Professional Schools.	$3.5
8222	Junior Colleges and Technical Institutes.	$3.5
8231	Libraries	$3.5
8243	Data Processing Schools	$3.5
8244	Business and Secretarial Schools.	$3.5
8249	Vocational Schools, N.E.C.	$3.5
8299	Schools and Educational Services, N.E.C.	$3.5
8299	Flight Training Services	$12.5
	Major Group 83—Social Services	
8322*	Individual and Family Social Services.	$3.5
8331	Job Training and Vocational Rehabilitation Services.	$3.5
8351	Child Day Care Services	$3.5
8361	Residential Care	$3.5
8399	Social Services, N.E.C.	$3.5

TABLE 2—FINAL RULE SIZE STANDARDS BY SIC INDUSTRY—Continued

[See footnotes at end of table]

SIC	Description (N.E.C. = Not Elsewhere Classified, * = New SIC Code in 1987, Not Used in 1972)	Size standards in number of employees or millions of dollars
		Final Rule
Major Group 84—Museums, Art Galleries, and Botanical and Zoological Gardens		
8412*	Museums and Art Galleries	$3.5
8422*	Arboreta and Botanical or Zoological Gardens.	$3.5
Major Group 86—Membership Organizations		
8611	Business Associations	$3.5
8621	Professional Membership Organizations.	$3.5
8631	Labor Unions and Similar Labor Organizations.	$3.5
8641	Civic, Social, and Fraternal Associations.	$3.5
8651	Political Organizations	$3.5
8661	Religious Organizations	$3.5
8699	Membership Organizations, N.E.C.	$3.5
Major Group 87—Engineering, Accounting, Research, Management, and Related Services		
8711*	Engineering Services:	
	Military and Aerospace Equipment and Military Weapons.	$13.5
	Marine Engineering and Naval Architecture.	$9.0
	Other Engineering Services	$2.5
8712*	Architectural Services (Other Than Naval).	$2.5
8713*	Surveying Services	$2.5
8721*	Accounting, Auditing, and Bookkeeping Services.	$4.0
8731*	Commercial Physical and Biological Research[18].	
	Aircraft	1,500
	Aircraft Parts, and Auxiliary Equipment, Aircraft Engines and Engines Part..	1,000
	Space Vehicles and Guided Missiles, their Propulsion Units, their Propulsion Unit Parts and their Auxiliary Equipment and Parts	1,000
	Other Commercial, Physical and Biological Research	500
8732*	Commercial Economic, Sociological and Educational Research.	$3.5
8733*	Noncommercial Research Organizations.	$3.5
8734*	Testing Laboratories	$3.5
8741*	Management Services	$3.5
8742*	Management Consulting Services.	$3.5
8743*	Public Relations Services	$3.5
8744*	Facilities Support Management Services.	[16] $3.5
----	Base Maintenance [17]	$13.5
8748*	Business Consulting Services, N.E.C.	$3.5
Major Group 89—Services Not Elsewhere Classified		
8999	Services, N.E.C.	$3.5

[1] Size standards preceded by a dollar sign ($) are in millions of dollars of annual receipts. All others are in number of employees unless specified otherwise.

[2] To be considered small, a firm must perform the dredging of at least 40 percent of the yardage with its own dredging equipment or equipment owned by another small dredging concern.

[3] *SIC Division D—Manufacturing:* "Rebuilding on a factory basis or equivalent." For rebuilding machinery or equipment on a factory basis, use SIC code applicable for new manufactured product. The appropriate size standard is not limited to manufacturers. Ordinary repair services or preservation operations, however, are not considered rebuilding activities.

[4] *SIC-2033:* For purposes of Government procurement for food canning and preserving under SIC-2033, the standard of 500 employees shall be exclusive of agricultural labor as defined in section (k) of the Federal Unemployment Tax Act, 68A Stat. 454, 26 U.S.C. (I.R.C. 1954) 3306.

[5] *SIC-2911:* For purposes of Government procurement, the firm may not have more than 1,500 employees, nor may it have more than 50,000 barrels per day capacity. This capacity may be measured in terms of either crude oil or bona fide feedstocks or both, but the sum total of the various petroleum-based inputs into the process may not exceed 50,000 barrels. In addition to the direct owned capacity of the concern in question, counted capacity will include any leased facilities or any facilities made available to the concern under an arrangement such as (but not limited to) an exchange agreement or a throughput, or other form, or processing agreement (whereby another party processes the concern's own crude or feedstocks). Such an arrangement would have the same effect as though such facilities had been leased, and this would have to be included in the concern's own capacity. The total product to be delivered in the performance of the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

[6] *SIC-3011:* For purposes of Government procurement, a firm is small for bidding on a contract for pneumatic tires within Census Classification Codes 30111 and 30112, provid-

ed that: (1) The value of tires within Census Classification Codes 30111 and 30112 which it manufactured in the United States during the previous calendar year is more than 50 percent of the value of its total worldwide manufacture, (2) the value of pneumatic tires within Census Classification Codes 30111 and 30112 which it manufactured worldwide during the preceding calendar year was less than 5 percent of the value of all such tires manufactured in the United States during said period, and (3) the value of the principal product which it manufactured or otherwise produced, or sold worldwide during the preceding calendar year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during said period.

[7] *SIC 4212*: The component "Garbage and Refuse, Collecting and Transporting, Without Disposal" shall have a size standard of $6.0 million. This is the same size standard as SIC-4953, Refuse Systems.

[8] *Offshore Marine Services*: The applicable size standard shall be $14 million for firms furnishing specific transportation services to concerns engaged in offshore oil and/or natural gas exploration, drilling production, or marine research; such services encompass passenger and freight transportation, anchor handling, and related logistical services to and from the work site or at sea.

[9] *SICs 4512, 4513, and 4522*: Includes passenger or cargo transportation requiring the use of one or more helicopters or fixed-wing aircraft. This does not include offshore marine transportation services as defined in footnote 8.

[10] As measured by total revenues, normally consisting primarily of commissions, in millions of dollars.

[11] *SIC-4953*: "Garbage and Refuse, Collecting and Transporting, Without Disposal," a component of SIC-4212, has the same size standard as SIC-4953.

[12] *SIC-5599*: For retail firms whose principal line of business is the retail sale of aircraft, a $5 million size standard shall apply.

[13] *Most industries in Division H*: —Finance, Insurance, and Real Estate—are excluded from SBA assistance.

[14] As measured by total assets.

[15] *Leasing of building space to the Federal Government by owners*—For the purpose of Government procurement, a size standard of $10 million in gross receipts is established for owners of building space that is leased to the Federal Government. The standard for these procurements shall apply to the owner of the property and not to those acting as an agent for the owner. There is no size standard concerning the agent.

[16] For all industries not specifically listed in this division, the size standard is $3.5 million.

[17] *If one of the activities of base maintenance, as defined in SIC-8744*, can be identified with a separate industry, and that activity (or industry) accounts for 50 percent or more of the value of an entire contract, then the proper size standard shall be that for the particular industry, and not the base maintenance size standard.

"Base Maintenance" constitutes three or more separate activities. The activities may be either service or special trade construction related activities. As services, these activities must each be in a separate industry. These activities may include, but are not limited to, such separate maintenance activities as Janitorial and Custodial Service, Protective Guard Service, Commissary Service, Fire Prevention Service, Safety Engineering Service, Messenger Service, and Grounds Maintenance and Landscaping Service. If the contract involves the use of special trade contractors (plumbing, painting, plastering, carpentering, etc.), all such specialized special trade construction activities will be considered a single activity, which is Base Housing Maintenance. This is only one activity of base maintenance and two additional activities must be present for the contract to be considered base maintenance. The size standard for Base Housing Maintenance is $7 million, the same size standard as for Special Trade Contractors.

[18] Contracts for the rebuilding or overhaul of aircraft ground support equipment on a contract basis will be classified under SIC-3728.

[19] *SIC-8731*: For research and development contracts requiring the delivery of a manufactured product, the size standard to use is that of the manufacturing industry in which the specific products are classified.

Research and Development, as defined in the SIC Manual, means laboratory or other physical research and development on a contract or fee basis. Research and development for purposes of size determinations does not include the following: economic, educational, engineering, operations, systems, or other nonphysical research; or computer programming, data processing, commercial and/or medical laboratory testing.

For purposes of the Small Business Innovation Research (SBIR) program only, a different definition has been established by law. See § 121.7 of these regulations.

'For research and development for aircraft, a size standard of 1,500 employees shall apply.

For research and development for guided missiles and space vehicles; aircraft engines; aircraft parts; guided missiles and space vehicle propulsion units and propulsion unit parts; guided missile and space vehicle parts and auxiliary equipment, not elsewhere classified, a size standard of 1,000 employees shall apply. Research and development for guided missiles and space vehicles includes evaluation and simulation and other services requiring thorough knowledge of complete guided missiles and space craft.

[20] *Facilities Management, a component of SIC-8744*, has the following definition: Establishments, not elsewhere classified, which provide overall management and the personnel to perform a variety of related support services in operating a complete facility in or around a specific building, or within another business or Government establishment. Facilities management means furnishing three or more personnel supply services which may include, but are not limited to, secretarial services, typists, telephone answering, reproduction or mimeograph service, mailing service, financial or business management, public relations, conference planning, travel arrangements, word processing, maintaining files and/or libraries, switchboard operation, writers, bookkeeping, minor office equipment maintenance and repair, use of information systems (not programming), etc.

[49 FR 5029, Feb. 9, 1984]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 121.2, see the List of CFR Sections Affected appearing in the Finding Aids section of this volume.

§ 121.3 General definitions.

(a) *Affiliates:* Concerns, other than investment companies licensed, or state development companies qualifying under the Small Business Investment Act of 1958 and the regulations issued pursuant thereto, or investment companies registered under the Investment Company Act of 1940, are affiliates of each other when either directly or indirectly (1) one concern controls or has the power to control the other or (2) a third party or parties controls or has the power to control both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management, and contractual relationships: *Provided, however,* That restraints imposed on a franchise by its franchise agreement shall not be considered in determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, if the franchisee has the right to profit from his effort, commensurate with ownership, and bears the risk of loss or failure.

(i) *Nature of Control.* Every business concern is considered as having one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

Example. A party owning 50 percent of the voting stock of a concern would have negative power to control such concern since he can block any action of the other stockholders. Also, the bylaws of a corporation may permit a stockholder with less than 50 percent of the voting stock to block any actions taken by the other stockholders. Affiliation exists when one or more parties have the power to control a concern while at the same time another party or other parties, may be in control of the concern at the will of the party with the power to control.

(ii) *Meaning of "party or parties."* The term "party" or "parties" includes, but is not limited to, two or more persons with an identity of interest such as members of the same family or persons with common investments in more than one concern. In determining who controls or has the power to control a concern, persons with an identity of interest may be treated as though they were one person.

(iii) *Control through stock ownership.* (A) A party is considered to control or have the power to control a concern if he controls or has the power to control 50 percent or more of its voting stock.

(B) A party is considered to control or have the power to control a concern even though he owns, controls, or has the power to control less than 50 percent of the concern's voting stock if the block of stock he owns, controls or has the power to control is large as compared with any other outstanding block of stock. If two or more parties each owns, controls or has the power to control less than 50 percent of the voting stock of a concern and such minority block is (*1*) equal or substantially equal in size, and (*2*) large as compared with any other block outstanding, there is a presumption that each such party controls or has the power to control such concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(C) If a concern's voting stock is distributed other than as described above, its management (officers and directors) is deemed to be in control of such concern.

Example. In a corporation where the officers and directors own various size blocks of stock totalling 40 percent of a concern's voting stock, but no officer or director has a block sufficient to give him control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control.

(iv) *Stock options, convertible debentures, and agreements to merge.* Stock options and convertible debentures exercisable at the time or within a relatively short time after a size determination and agreements to merge in the future are considered as having a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements are treated as though the rights held thereunder had been exercised.

Example. If company "A" holds an option to purchase a controlling interest in company "B" and such option can be exercised at any time by company "A," the situation is treated as though company "A" had exercised its rights and had become owner of a controlling interest in company "B." Further, if company "A" has entered into an agreement to merge with company "B" in the future, the situation is treated as though the merger had taken place.

(v) *Voting trusts.* If the purpose of a voting trust, or similar agreement is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may qualify as a small business within the size regulations, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not valid within the appropriate jurisdiction. However, if a voting trust is entered into for a legitimate purpose other than that described above, and it is valid within the appropriate jurisdiction, it may be considered valid for the purpose of a size determination, provided such consideration is determined to be in the best interest of the small business program.

(vi) *Control through common management.* A concern may be found as controlling or having the power to control another concern when one or more of the following circumstances are found to exist, and it is reasonable to conclude that under the circumstances, such concern is directing or influencing or has the power to direct or influence the operation of such other concern.

(A) *Interlocking management.* Officers, directors, employees, or principal stockholders of one concern serve as a working majority of the board of directors or officers of another concern.

(B) *Common facilities.* One concern shares common office space and/or employees and/or other facilities with another concern particularly where such concerns are in the same or related industry or field of operation, or where such concerns were formerly affiliated.

(C) *Newly organized concern.* Former officers, directors, principal stockholders, and/or key employees of one concern organize a new concern in the same or a related industry or field of operation, and serve as its officers, directors, principal stockholders, and/or key employees, and one concern is furnishing or will furnish the other concern with subcontracts, financial or technical assistance, and/or other facilities, whether for a fee or otherwise.

(vii) *Control through contractual relationships*—(A) *Definition of a joint venture for size determination purposes.* A joint venture for size determination purposes is an association of persons and/or concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out a single specific business venture for joint profit for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. A joint venture is viewed as a business entity in determining power to control its management.

(B) *Joint ventures—financial assistance.* For the purpose of financial assistance to a joint venture, the parties thereto are considered as controlling or having the power to control each other and are considered as being affiliated. For the purpose of financial assistance to a concern which has requested assistance for its own use, but which is incidentally a party to a joint venture, such concern is not considered as being affiliated with its joint venturer.

(C) *Joint venture—procurement and property sale assistance.* Concerns bidding on a particular procurement or property sale as joint venturers are considered as affiliated and controlling or having the power to control each other with regard to performance of the contract. Moreover, an ostensible subcontractor which is to perform primary or vital requirements of a contract may have a controlling role such to be considered a joint venturer affiliated on the contract with the prime contractor. A joint venture affiliation finding is limited to particular contracts unless the SBA size determination finds general affiliation between the parties.

(D) Where a concern is not considered as being an affiliate of a concern with which it is participating in a joint venture, it is necessary, nevertheless, in computing annual receipts, etc., for the purpose of applying size standards to include such concern's share of the joint venture receipts (as distinguished from its share of the profits of such venture).

(E) *Franchise and license agreements.* If a concern operates or is to operate under a franchise (or a license) agreement, the following policy is applicable: In determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, the restraints imposed on a franchisee by its franchise agreement shall not be considered provided that the franchisee has the right to profit from its effort and the risk of loss or failure, commensurate with ownership. Even though a franchisee may not be controlled by the franchisor by virtue of the contractual relationship between them, the franchisee may be controlled by the franchisor or others through common ownership or common management, in which case they would be considered as affiliated.

(b) "Concern" means any business entity organized for profit (even if its ownership is in the hands of a non-profit entity) with a place of business located in the United States and which makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, material and/or labor, etc. "Concern" includes but is not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of making affiliation findings (see subsection (a) of this section) any business entity whether organized for profit or not, and any foreign business entity, i.e., any entity located outside the United States, shall be included.

(c) A concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

[49 FR 5029, Feb. 9, 1984; 49 FR 13676, Apr. 6, 1984]

§ 121.4 Small business for financial programs.

(a) The provisions within this section apply to the determination of the size of a firm for purposes of eligibility for SBA financial assistance, which includes the following SBA programs: Financial and Guarantee Assistance, Small Business Investment Companies, Development Companies, Surety Bond Guarantees, Pollution Control Financing Guarantees, and Minority Small Business and Capital Ownership Development, including the section 8(a) program. Such size eligibility is determined with reference to the size standard for the primary industry of the concern (including any affiliates) under the SIC code size standards in the table contained in § 121.2. The size standards are generally expressed in terms of four-digit industries set forth in the Standard Industrial Classification Manual. In addition to meeting the size standards of this regulation, a small business concern must be not dominant in its field of operation. (See § 121.3(c).) If a concern is engaged in a number of industries (or including its affiliates is engaged in several industries), the size standard shall be that of the concern's (or concerns') primary industry. The primary industry determination considers the distribution among industries during the most recent fiscal year and 12 month period of receipts and employees of the concern (or of an entire affiliated group if the group in its entirety has a different primary industry). The determination may also consider other factors (e.g., patents, contract awards, assets).

(b) After the appropriate size standard is ascertained, the eligibility of the concern under that size standard must be considered. In determining whether a concern is eligible under its applicable primary industry size standard, employees or receipts (or other size measurement under subsection (e) of this section, e.g., net worth) of the concern and its affiliates must be aggregated. (Section 121.3(a) sets forth the SBA affiliation definition.)

(c) A concern which applies for an SBA loan or guarantee to refinance an existing SBA loan or guarantee but which, since the date of the original financing, has by natural growth (as distinguished from, e.g., merger) grown to a size which exceeds the applicable size standard, is considered as small for the purpose of refinancing if SBA administratively determines that refinancing is necessary to protect the Government's financial interest.

(d) Except for firms participating in the section 8(a) program, the concern's size status may be determined at the SBA District Office, the SBA Regional Office, or by any other SBA office appropriately designated. This determination may be made at the time of application for assistance. The concern's size eligibility for assistance in determined as of the date of its application or self-certification as small by the concern. Subsequent changes in size will not affect a firm's size status. Size status and size eligibility for the section 8(a) program is determined pursuant to subsection (g) of this section.

(e) The applicable size standards for the purpose of all SBA financial and guarantee programs excluding the Section 8(a) Program and the Surety Bond Guarantee Assistance Program, are increased by 25 percent whenever the concern agrees to use the assistance within a "labor surplus area," or "redevelopment area." "Redevelopment area" is defined in the Public Works Economic Development Act of 1965 (Pub. L. 89-136, 79 Stat. 570, 42 U.S.C. 3211). "Labor surplus areas" are listed monthly in the Department of Labor publication "Area Trends."

(f) A small business concern for the purpose of receiving financial or other assistance from small business investment companies or development companies, or pollution control guarantee assistance, is one which: (1) Together with its affiliates, does not have net worth in excess of $6 million, and does not have an average net income after Federal income taxes for the preceding 2 years in excess of $2 million (average net income to be computed without benefit of any carryover loss); or (2) a concern is also eligible for these programs if it otherwise qualifies under this section as a small business concern for financial assistance.

(g) For purposes of the Minority Small Business and Capital Ownership Development Assistance (section 8(a)) program,

(1) In order to be eligible to participate in the section 8(a) program, an applicant concern must qualify as a small business concern as defined for purposes of Government procurement in § 121.2 of these rules. The particular size standard to be applied will be based on the primary industry classification of the applicant concern.

(2) In order to continue to participate in the section 8(a) program once a concern is admitted to the program, the concern must certify to SBA that it is a small business for the purpose of performing each individual contract which it is awarded. SBA, in turn, will verify such certifications.

(i) After SBA has notified a procuring agency in writing that it has accepted a procurement for the 8(a) program in support of the approved business plan of a particular 8(a) concern, the 8(a) concern shall certify that it is a small business for the purpose of performing that particular contract (by certifying that it is small for a particular SIC Code of Codes) at the time it submits it initial bid or offer including price to the procuring agency for that contract. A copy of the 8(a) concern's bid or offer, including its self-certification as to size, shall be provided to the appropriate SBA district office upon submission to the procuring agency.

(ii) The SBA district office involved with the procurement shall verify, within 30 days of its receipt of the selected 8(a) concern's self-certification of size, if possible, that the selected concern is small.

(A) In verifying the selected 8(a) concern's size, SBA will review the annual financial statements and other relevant material regarding the number of employees submitted by the concern to SBA pursuant to these regulations. Such financial statements and materials should be present in the 8(a) concern's business plan file. Verification cannot occur unless these financial statements and materials are available to and reviewed by SBA.

(B) Where SBA verifies that the selected 8(a) concern is small for a particular procurement, subsequent changes in size up to the date of award, except those due to affiliation with another business concern, will not affect the firm's size status as it relates to that procurement.

(*1*) Where the selected 8(a) concern has become affiliated with another business concern between the date of its certification and the date of award, the concern must notify SBA of its affiliation and must recertify its size status. SBA must verify that new certification, before award can occur.

(*2*) Failure to notify SBA of its affiliation may result in the firm's termination from the program under § 124.112(a)(25) of these regulations.

(*3*) An award of an 8(a) contract will be voidable where the selected 8(a) concern does not recertify its size status upon becoming affiliated.

(C) SBA may, in its discretion, request a formal size determination with the SBA regional office serving the geographical area in which the principal office of the selected 8(a) concern is located.

(D) Where SBA cannot verify that the selected 8(a) concern is small for a particular procurement, the conern will be ineligible for that procurement, unless a formal size determination is made in favor of the 8(a) concern.

(*1*) The selected 8(a) concern may request a formal size determination with the SBA regional office serving the geographical area in which the principal office of the 8(a) concern is located within 5 working days of its receipt of SBA's denial of verification. Such request shall include any information or documentation deemed relevant by the 8(a) concern regarding its size.

(*2*) Where the selected 8(a) concern does not timely request a formal size determination, SBA may accept the procurement in support of another 8(a) concern, or may return the procurement from the 8(a) program, as appropriate.

(*3*) After receipt of a request for a formal size determination, the relevant regional office will determine the size status of the selected 8(a) concern as it relates to the particular contract at issue, and will notify the SBA district office and the selected 8(a) concern of this decision by certified mail, return receipt requested, within 10 working days, if possible. In making a size determination, the procedures of § 121.8 shall apply, where appropriate.

(*4*) An appeal of this determination may be made by the selected 8(a) concern to SBA's Office of Hearings and Appeals, following the procedures of § 121.11 of this part.

(h) For purposes of surety bond guarantee assistance,

(1) Any construction concern (general or special trade) is small if its annual receipts average for its preceding three fiscal years does not exceed $3.5 million.

(2) Any concern performing a contract for services (including but not limited to services set forth in Division I, Services, of the Standard Industrial Classification Manual) is small if its annual receipts average for its preceding three fiscal years does not exceed $3.5 million.

(3) For other surety bond guarantee assistance, the provisions of § 121.4(a) and (b) are applicable in determining eligibility as a small business concern.

[49 FR 5029, Feb. 9, 1984; 49 FR 13676, Apr. 6, 1984, as amended at 51 FR 45104, Dec. 17, 1986]

§ 121.5 Small business for Government procurement.

(a) A small business concern for the purpose of Government procurement is a concern, including its affiliates, which is not dominant in the field of operation in which it is bidding on Government contracts and can further quality under the criteria set forth in this section. Except for Phase I and Phase II awards under SBA's Small Business Innovation Research (SBIR) Program, the size status of a concern (including its affiliates) is determined as of the date of its written self-certification as a small business as part of the concern's submission of a bid or offer. For proposes of Phase I and Phase II awards under SBA's SBIR Program, the size status of a concern is determined as of the date of the award. An opinion rendered by SBA to a contracting officer on the basis of published or commonly known information and without the benefit of an SBA inquiry is not considered an SBA size determination.

(b)(1) The procurement is classified for size standard purposes in the most appropriate SIC code industry category (§ 121.2); giving consideration to the industry descriptions in the regulation and the SIC Manual, the product or service description in the solicitation and attachments thereto, the relative value of items in the procurement and the principal nature of the procurement. In borderline cases, consideration may be given to previous Government procurement classifications of the same or similar products or services, additional information on the industries and on the product or service being procured, and to evaluations on which industry classification would best serve the purposes of the Small

Business Act. A concern which is bidding on a contract for a procurement in an SIC industry under § 121.2 must meet the size standard designated for that industry. The size standard and SIC industry designation are set forth in the solicitation.

(2) Any concern which submits a bid or offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is deemed to be a small business when:

(i) In the case of Government procurement reserved (i.e, set aside) for small businesses, such nonmanufacturer must furnish, in the performance of the contract, the product of a small business manufacturer or producer, which end product must be manufactured or produced in the United States. The term "nonmanufacturer" includes a concern which can manufacture or produce the product referred to in the specific procurement but does not do so in connection with that procurement. For size determination purposes there can be only one manufacturer of the end item being procured. The manufacturer of the end item being procured is the concern which, with its own forces, transforms inorganic or organic substances including raw materials and/or miscellaneous parts or components into such end item. Whether a bidder on a particular procurement is the manufacturer or a nonmanufacturer for the purpose of a size determination need not be consistent with whether such concern is or is not a manufacturer for the purpose of the Walsh-Healey Act.

(ii) A concern which purchases items and packages them into a kit is considered to be a nonmanufacturer small business and can qualify as such for a given procurement if it meets the size qualifications of a small nonmanufacturer for the procurement and if more than 50 percent of the total value of the kit and its contents is accounted for by items manufactured by small business.

(iii) If the procurement is subject to, and is actually processed under, "small purchase procedures" as defined in the Defense Acquisition Regulation (DAR), Federal Procurement Regulation (FPR), and the National Aeronautics and Space Administration Procurement Regulation (NASAPR), as applicable, such nonmanufacturer may furnish any domestically produced or manufactured product.

(iv) For the purpose of receiving a Certificate of Competency on an unrestricted procurement, a small business nonmanufacturer may furnish any domestically produced or manufactured product. The applicable size standard shall be that of the wholesale industry of the item being procured.

(c) If a procurement calls for two or more items with different size standards and the bidder can bid on any items, the bidder must meet the size standard for each item for which it submits a bid. If the procurement calls for more than one item and a bidder is required to bid on all items, the bidder can qualify as small business for such procurement if it meets the size standard for the item accounting for the greatest percentage of the total contract value.

(d) The determination of the appropriate classification of a product or service shall be made by the contracting officer of the procuring agency or his authorized representative. Both the SIC industry classification and the applicable size standard (number of employees, average annual receipts, etc.), shall be set forth in the solicitation and such determination of the contracting officer shall be final unless appealed to SBA in the manner provided in § 121.11; provided, however, that an unclear or incomplete classification action by the contracting officer may be supplied by the SBA if necessary in connection with a size determination or size appeal.

(e) In the submission of a bid or proposal on a Government procurement, a concern which meets the designated size standard and which either has not been determined by SBA to be ineligible under the same or a lower size standard, or has been determined to be ineligible but subsequently has been recertified by SBA, may represent that it is a small business concern within the size standard designated for the procurement. In the absence of a written protest by other bidders or other credible information which would cause a contracting officer to question the veracity of the self-certification, a contracting officer shall accept the self-certification at face value for the particular procurement involved. The contracting officer shall refer written protests to SBA; and, if he has cause, may refer his own protest to SBA for a size determination. The protest should provide specific factual reasons enabling the protested concern to respond to the particular allegations that it is not a small business concern within the size standard applicable to the procurement.

(f) If a concern has been determined by SBA to be ineligible as a small business under a particular size standard, and it has already self-certified as a small business on a pending procurement subject to the same or lower number of employees or annual receipts size standard (whichever is applicable), it shall immediately notify the contracting officer of such adverse size determination.

(g) For subcontracting purposes pursuant to Section 8(d) of the Small Business Act, a concern is small

(1) In connection with subcontracts of $10,000 or less which relate to Government procurements if, including its affiliates, its number of employees does not exceed 500 persons; and

(2) In connection with subcontracts exceeding $10,000 which relate to Government procurements if its number of employees or average annual receipts, (including its affiliates), does not exceed the size standard under § 121.2 for the product or service it is providing on the subcontract. Concerns may self-certify their status as a small subcontractor for the procurement.

(3) The contracting officer or other affected party in connection with small business subcontracting requirements, pursuant to section 8(d) of the Small Business Act, may protest a written representation of small business status, or the refusal to accept such written representation, of a concern offering as a subcontractor on a particular procurement. The protest and related information shall be referred to the SBA Regional Office in which the concern has its principal office for a size determination or other appropriate SBA action.

[49 FR 5029, Feb. 9, 1984, as amended at 52 FR 42093, Nov. 3, 1987]

§ 121.6 Small business for sales or lease of Government property.

In the submission of a bid or proposal for the purchase or lease of Government-owned property, a small business concern is one which meets the criteria provided in this section. The size status of a concern (including its affiliates) is determined as of the date of written self-certification as a small business as part of a concern's submission of a bid or offer. An opinion rendered by SBA to a contracting officer on the basis of published or commonly known information and without the benefit of an SBA inquiry is not considered an SBA size determination. In the absence of a written protest by other bidders or other credible information which would cause a contracting officer to question the veracity of a concern's self-certification as a small business, a contracting officer shall accept the self-certification at face value. The contracting officer shall refer written protests to SBA; and, if he has cause, may refer his own protest to SBA for a size determination. The protest should provide specific factual reasons enabling the protested concern to respond to the particular allegations that it is not a small business concern for the sale or lease on which protested. If a concern has been determined by SBA to be ineligible under the applicable size standard and has not been recertified, it shall not self-certify under that size standard until it has been recertified by SBA; and shall immediately notify the contracting officer on any pending sales or leases where it had self-certified under the same size standard.

(a) *Sales of Government-owned property other than timber.* A small business concern for the purpose of the sale of Government-owned property other than timber is a concern, including its affiliates, which is independently owned and operated, is not dominant in its field of operation, and can further qualify under the following criteria.

(1) *Manufacturers.* Any concern which is primarily engaged in manufacturing is small if its number of employees does not exceed 500 persons: *Provided, however,* That a concern primarily engaged in SIC Industry 2911, Petroleum Refining,[2] is small if its number of employees does not exceed 1,500 persons and it does not have more than 45,000 barrels per day crude oil or bona fide feed stock capacity from owned and/or leased facilities, or from facilities made available to such concern under an arrangement such as, but not limited to, an exchange agreement (except one on a refined-product-for-refined-product basis) or a throughput or other form of processing agreement, with the same effect as though such facilities had been leased.

(2) *Other than manufacturers.* Any concern which is primarily not a manufacturer (except as specified in paragraph (a)(3) of this section) is small if its average annual receipts for its preceding 3 fiscal years do not exceed $2 million.

(3) *Stockpile purchasers.* Any concern primarily engaged in the purchase of materials which are not domestic products is small if its annual receipts for its preceding 3 fiscal years do not exceed $42 million.

(b) *Sales of Government-owned timber.* (1) In connection with sale of Government-owned timber, a small business is a concern that:

(i) Is primarily engaged in the logging or forest products industry;[3]

(ii) Is independently owned and operated;

(iii) Is not dominant in its field of operation; and

(iv) Together with its affiliates, its number of employees does not exceed 500 persons.

(2) In the case of Government sales of timber reserved for or involving preferential treatment of small businesses, when the Government timber being purchased is to be resold, a concern is a small business when:

(i) It is a small business within the meaning of paragraph (b)(1) of this section, and

(ii) It agrees that it will not sell to a concern which is not a small business within the meaning of this paragraph more than 30 percent (50 percent in Alaska) of such timber. The term "sell" includes but is not limited to the exchange of sawlogs for sawlogs on a product-for-product basis with or without monetary adjustment, and an indirect transfer such as the sale of the assets of (or a controlling interest in) a concern after it has been awarded one or more set-aside sales of timber. Under the latter circumstances, if, after being awarded a set-aside sale of timber a small business concern merges with or becomes subject to the control of a large business, so much of such timber (or sawlogs therefrom) shall be sold to one or more small businesses as is necessary for compliance with the 30 percent (50 percent in Alaska) restriction.

(3) In the case of Government sales reserved for or involving preferential treatment of small businesses, when the Government timber purchased is not to be resold in the form of sawlogs to be manufactured into lumber and timbers, a concern is a small business when:

(i) It meets the criteria contained in paragraph (b)(1) of this section, and

(ii) It agrees that in manufacturing lumber or timbers from such sawlogs cut from the Government timber, it will do so only with its own facilities or those of concerns that qualify under paragraph (b)(1) of this section as a small business. This provision assumes that the successful bidder will remain a small business until the products have been manufactured. Accordingly, if, after acquiring the set-aside sale the bidder is purchased by, becomes controlled by, or merged with a large business, so much of such timber (or sawlogs therefrom) as is necessary shall be sold to one or more small businesses for compliance with the 30 percent (50 percent in Alaska) restriction. Any concern which self-certifies as a small business concern for the purpose of award under a small business set-aside sale of Government timber is expected to maintain evidence that it did so in good faith. Accordingly, such a concern will have to maintain for a period of 3 years the name, address, and size status of each concern to whom the timber or sawlogs were sold or disposed, and the log species, grades, and volumes involved. Such concern, and any subsequent small business concern that acquires the sawlogs, also shall require its small business purchasers to maintain similar records for a period of 3 years. Further, if the timber purchased is not to be resold in the form of sawlogs, but is to be manufactured into lumber or timbers by a concern other than the bidder, the bidder must maintain records to show the name, address, and the size status of the concern manufacturing the sawlogs into lumber or timbers.

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[2] See § 121.2 (footnotes) for definition of crude oil capacity and bona fide feed stock capacity.

[3] "Forest Products Industry" means logging, wood preserving, and the manufacture of lumber and wood related products such as veneer, plywood, hardboard, particle board, or wood pulp, and of products of which lumber or wood related products are the principal raw material.

(c) *Special salvage timber sales.*

(1) In connection with the sale of Government-owned special salvage timber by the USFS and BLM a small business is a concern that:

(i) Is primarily engaged in the logging or forests products industry;

(ii) Is independently owned and operated;

(iii) Is not dominant in its field of operation; and

(iv) Together with its affiliates, its number of employees does not exceed 25 persons during any pay period for the last 12 months.

(2) In the case of Government-owned special salvage reserved for small businesses, when the special salvage timber being purchased is to be resold, a concern is a small business when:

(i) It is a small business within the meaning of paragraph (c)(1) of this section, and

(ii) It agrees that as an eligible logger, it will accomplish a significant portion of the logging operation, exclusive of hauling, with its own employees. Significant logging of timber means using its own employees to accomplish two or more of the following elements: (A) Felling and bucking, (B) yarding, (C) loading. It further agrees that such SSTS logging elements not accomplished with its own employees will be subcontracted only to concerns eligible for preferential award of an SSTS.

(3) In the case of Government-owned special salvage timber reserved for or involving preferential treatment of small businesses when the special salvage timber purchased is not to be resold in the form of sawlogs to be manufactured into lumber and timbers, a concern is a small business when:

(i) It meets the criteria contained in paragraph (c)(1) of this section, and

(ii) It agrees that it will manufacture a significant portion of the logs with its own employees. Manufacture of logs means, at the minimum, a breakdown of the log into the rough cut of the finished product.

(iii) It further agrees that, it will accomplish the logging of SSTS timber, exclusive of hauling, with its own employees, or will subcontract such logging only to concerns eligible for preferential award of an SSTS.

(d) Any firm bidding to lease Government land for purposes of coal mining is classified as small if:

(1) It is independently owned and operated;

(2) It is not dominant in its field of operation;

(3) Together with its affiliates, its number of employees does not exceed 250 persons;

(4) It maintains management and control of the actual mining operations at the tract; and

(5) Any transfer of the lease from the holder of the original setaside must be to another small business within the meaning of this paragraph.

(e) In the submission of a bid or proposal for a Government lease of uranium prospecting or mining rights, a concern whose number of employees does not exceed 100 persons may represent that it is a small business. In the absence of a written protest or other information which would cause him to question the veracity of the self-certification, the contracting officer shall accept the self-certification at face value for the particular lease involved.

[49 FR 5029, Feb. 9, 1984, as amended at 50 FR 6338, Feb. 15, 1985]

§ 121.7 Small Business Innovation Research Programs.

(a) A small business concern for purposes of award of any funding agreement under a solicitation pursuant to the Small Business Innovation Development Act of 1982 (Pub. L. 97-291, 15 U.S.C. 638(e)-(k)) is one which, including its affiliates, has a number of employees not exceeding 500. The term "affiliates" is defined in § 121.3(a) of this title. The term "number of employees" is defined in § 121.2(b) of this title.

(b) The Small Business Innovation Development Act of 1982 defines "research" or "research and development" as any " * * * activity which is (1) a systematic, intensive study directed toward greater knowledge or understanding of the subject studies; (2) a systematic study directed specifically toward applying new knowledge to meet a recognized need; or (3) a systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement or prototypes and new processes to meet specific requirements"—15 U.S.C. 638, as amended by 96 Stat. 218, Sec. 4(e)(5).

(c) SBA has issued a policy directive (Policy Directive No. 65-01.1; 48 FR 38794, August 26, 1983) prescribing criteria for solicitations and award of funding agreements pursuant to the Small Business Innovation Research (SBIR) Program. Under the SBIR Program, the term "funding agreement" means any contract, grant, or cooperative agreement entered into between any Federal agency and any small business for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government.

[49 FR 5029, Feb. 9, 1984; 49 FR 13676, Apr. 6, 1984]

§ 121.8 Size determinations.

(a) Original size determinations shall be made by the regional director, or his delegatee, serving the region in which the principal office of the concern (not including its affiliates) whose size is in question is located, except that for lease guarantee reinsurance purposes such determinations shall be made by the Associate Administrator for Finance and Investment. The regional director or his delegatee, or the Associate Administrator for Finance and Investment promptly shall notify in writing, by certified mail, return receipt requested, the concern in question and other interested persons of his decision. Such determination shall become effective immediately and shall remain in full force and effect unless and until reversed by the Small Business Administration. For the purpose of Government procurements or sales, a size determination shall be made only in the event of a protest pursuant to these regulations, a request for recertification, a request for a Certificate of Competency, or if the Associate Administrator for Procurement Assistance or his delegatee or a regional director or his delegatee determines it necessary to question the size status of a concern for the purpose of any Small Business contracting program or Procurement Source Program, or for property sales purposes or for any other purpose relating to Government procurement or sales. For the purpose of SBA financial assistance, a formal size determination under this provision shall be made by the Regional Office only (1) where the regular review of the loan file or other substantial evidence indicates the need therefor and a request is made by the appropriate SBA financial assistance official, or (2) where an initial determination is made by the SBA financial assistance officer that the concern is other than small and a request is made by the loan applicant. Initial nonformal financial assistance size determinations may not be appealed.

(b) Once properly instituted (i.e., by filing of a protest or by an official request for a determination) formal size determinations may be completed, even if the particular application, bid, or offer is subsequently withdrawn, or the Government procurement or sale is cancelled or awarded.

(c) The size determination will be based primarily on facts and allegations supplied by the parties to the

SBA. If deemed necessary or appropriate SBA may utilize other information in its files and may make inquiries including requests to the parties or other persons for additional specific information. The burden of establishing its small business size by submitting full information to SBA shall be upon the concern whose size status is under consideration. Specific signed factual evidence will be weighed more heavily by SBA than general unsupported allegations or opinions. In the case of refusal or failure to furnish requested information within a required time period, SBA may assume that disclosure would be contrary to the interests of the party failing to make disclosure. The SBA formal size determination shall be based upon the record, including reasonable inferences therefrom, and shall state in writing the basis for its findings and conclusions.

(d) If SBA has made a formal size determination that a particular concern is not small, the concern will not be deemed eligible within such applicable size standard for any assistance under the Small Business Act or the Small Business Investment Act of 1958, unless it is thereafter recertified by SBA as a small business. After such an adverse size determination, the concern shall not self-certify itself as small within the same or a lower employee or annual receipts size standard (whichever is applicable) unless it is recertified. Applications for recertification shall be made to the SBA Regional Office which made the original size determination. Applications for recertification shall be accompanied by a current completed SBA Form 355 (OMB No. 3245-0101) and by any other pertinent information necessary to show a significant change in its ownership, management, contractual relations, or in other factors bearing on its status as a small concern. If good cause is shown in extraordinary cases, as determined by the Presiding Judge of the Office of Hearings and Appeals, the original decision on the application for recertification may be made by the Presiding Judge.

(1) Recertification shall not be required nor will the prohibition against future self-certification apply if the adverse SBA size determination is based solely on a finding of affiliation due to a joint venture (e.g., ostensible subcontracting) limited to a particular Government procurement or property sale, or is based on an ineligible nonmanufacturer size determination on a particular Government procurement.

(2) If SBA makes a size determination denying an application for recertification, such adverse size determination may be appealed to the SBA Office of Hearings and Appeals. Recertifications have future effect only and, except as to timber sales size determinations, are not appealable by other than the concern in question (however, the concern's later self-certification on subsequent set-aside procurements or property sales may be protested in the usual manner).

(e) Size determinations for compliance purposes. Upon request by other Government agencies, SBA size determinations under Part 121 may be made to assist in the enforcement or administration of regulations or contracts, as well as in connection with award of contracts or granting of assistance. SBA size determinations are findings on the size status of a concern (including its affiliates) as of a definite time and regarding a specific applicable SBA size standard, and do not rule on compliance, contractual or administrative matters which are handled by the other agencies.

[49 FR 5029, Feb. 9, 1984; 49 FR 13676, Apr. 6, 1984]

§ 121.9 Protest of small business status.

(a) *How to protest:* Any bidder or offeror or other interested party may challenge the small business status of any other bidder or offeror on a particular Government procurement or sale. Such challenge shall be made by delivering a protest to the contracting officer responsible for the particular procurement or sale involved. In order to apply to the procurement or sale in question, such protest must be filed prior to the close of business on the 5th day, exclusive of Saturdays, Sundays, and legal holidays, after bid or proposal opening, except that in the case of negotiated procurements, a protest may be filed within 5 days exclusive of Saturdays, Sundays, and legal holidays after receipt from the contracting officer of notification of the identity of the offeror being protested. Such filing must be delivered to the contracting officer by hand, telegram, or mail within the 5-day period allotted: *Provided, however,* That a protest shall be considered timely if made by telephone to the contracting officer within the 5-day period allotted and the contracting officer thereafter receives a confirming letter (1) within such 5-day period or (2) postmarked no later than 1 day after the date of such telephone protest. Any contracting officer who receives a protest shall promptly forward such protest to the SBA regional office serving the geographical area in which the principal office of the protested concern, not including its affiliates, is located. A contracting officer may at any time after bid opening question the small business status of any bidder or offeror for the purpose of a particular procurement or sale by filing a protest with the SBA regional office serving the area in which the principal office of the protested concern, not including its affiliates, is located. A protest by a contracting officer shall be timely for the purpose of the procurement or sale in question whether filed before or after award. A protest received after the time limits set forth herein shall not apply to the procurement or sale in question. A concern determined other than small business as a result of such late protest, however, shall be precluded from self-certification in any other procurement or sale in which the size standard is not higher than the standard in the procurement or sale in question. A protest must adequately set forth specific alleged grounds for the protest. A protest merely alleging that the protested concern is not small or is affiliated with unspecified other concerns will not be deemed to adequately specify grounds for the protest. Evidence supporting the protest may be submitted therewith. Protests which do not set forth specific alleged grounds for the protest will be dismissed.

(b) *Notification of protest:* Upon receipt of such protest, the SBA regional director or his delegatee shall immediately notify the contracting officer and the protestant of the date such protest has been received and that the size of the concern being protested is being considered by SBA. The regional director or his delegatee shall also advise the protested bidder or offeror of the receipt of the protest and shall forward to the protested bidder or offeror a copy of the protest and a blank SBA Form 355, Application for Small Business Size Determination (OMB No. 3245-0101), by certified mail, return receipt requested. Such bidder must, within 3 working days after receipt of the copy of the protest and SBA Form 355 (OMB No. 3245-0101), file the completed form as directed by SBA, must attach thereto a statement in answer to the allegations of the letter of protest, together with evidence to support such position. If such bidder or offeror does not submit the complete SBA Form 355 within the filing period provided above, or within any additional period of time granted by SBA for cause, SBA will rule the protested concern is other than a small business. If the bidder or offeror does not submit the completed SBA Form 355 (OMB No. 3245-0101) within the period provided above, or within any additional period of time provided by SBA upon application for good cause shown, SBA may assume that the disclosure of the Form or any missing part thereof would be contrary to the interests of the party failing to make such disclosure.

(c) Notification of determination: After receipt of a protest and responses thereto, SBA shall determine the small business status of the protested bidder or offeror and, by certified mail, return receipt requested, notify the contracting officer, the protestant, and the protested bidder or offeror of its decision within 10 working days, if possible.

(d) If SBA has determined that a concern is ineligible as a small business for the purpose of a particular procurement, it cannot thereafter become eligible for the purpose of such procurement by taking affirmative acts to constitute itself a small business.

(e) Multiple Award Schedules. Protests will be deemed timely if received by SBA at any time prior to the expiration of the contract period (including renewals) on a multiple award schedule procurement set aside for small business.

[49 FR 5029, Feb. 9, 1984; 49 FR 13676, Apr. 6, 1984]

§ 121.10 Size standards responsibilities.

(a) Office of Size Standards Staff, Office of the Administrator, shall:

(1) Develop and recommend small business size standards to the Administrator of SBA for promulgation.

(2) Consider and take appropriate action on written requests to change existing size standards or establish new size standards.

(3) Conduct industry hearings pertaining to size standards.

(4) Perform other related functions (e.g., industry studies) as may be appropriate to administer the SBA size standards program.

(b) Requests to change the existing, or establish new, size standards should be addressed to the Director, Size Standards Staff, Office of the Administrator, 1441 L Street, NW., Washington, D.C. 20416, and should include information on the economic conditions and structure of the entire national industry, as well as specific reasons and justifications for the change or new size standard. The methodology described in the section on "Purpose and Method of Establishing Size Standards" (§ 121.1) provides basic criteria on the kinds of information desirable to make an appropriate request. If no size standard of an industry has been established in this part, then SBA, upon request, may issue a temporary size standard for the industry in question by appropriate publication of an interim emergency rule and subsequent notice and comment rulemaking in accordance with the Administrative Procedure Act.

(c) The Office of General Counsel, in conjunction with other interested SBA offices, shall develop and recommend to the Administrator regulations and procedures to assist in implementing the size standards.

(d) The SBA Size Policy Board shall consider and develop matters of size policy. It will consider and make recommendations relating to improvements in SBA regulations, procedure
and directives concerning size matter

(e) Pursuant to the provisions c
§ 121.11 of this part, the Office c
Hearings and Appeals will review ap
peals and make final decisions affirm
ing, reversing or modifying:

(1) Determinations as to a concern
small business size status made purs
ant to §§ 121.8 and 121.9 of this pa
(size determination); and

(2) Designations by contracting off
cers of the Standard Industrial Class
fication (SIC) industry into which th
product or service is classified and/c
the Small Business Administratio
size standard applicable thereto, fo
the purpose of Government procur
ments and sales made pursuant
§§ 121.5 and 121.6 (product or servi
classification).

§ 121.11 Procedure for size appeals.

(a) *Jurisdiction of Office of Hearin*
and Appeals. The jurisdiction of th
Office of Hearings and Appeals und
this part shall be limited, as specifi
in paragraphs (a)(1) and (a)(2) of th
section, to appeals from size determ
nations and product or service classi
cations. No appeal will be permitt
from an informal opinion or advi
concerning a company's future sma
business size status based on propos
but unexecuted changes in its orga
zation, management, or contractual
lations, or a small business size stan
ard established by the Small Busine
Administration for a particular indu
try or field of operation, or any of t
accompanying size regulations. T
Office of Hearings and Appeals w
review appeals and make final de
sions pursuant to the provisions
paragraphs (b) through (w) of this s
tion, affirming, reversing or modi
ing:

(1) Determinations as to a concer
small business size status made purs
ant to §§ 121.8 and 121.9 of this pa
(size determination); and

(2) Classifications by contracting
ficers of the Standard Industrial Cl
sification (SIC) Code and/or the Sm
Business Administration (SBA) s
standard applicable to a product
service for the purpose of Governme
procurements and sales made pur

ant to §§ 121.5 and 121.6 of this part (product or service classification).

(b) *Definitions.* The following definitions shall apply to this section:

(1) "Person" means an individual, partnership, corporation or association.

(2) "Participant" means any party or person that makes a filing pursuant to this section. Except in the case of parties, participation in the proceeding may be limited at the discretion of the Presiding Judge.

(3) "Party" means the appellant, the concern whose size is at issue and all alleged affiliates of such concern that participate or are specifically afforded the opportunity to participate in the proceeding by the Presiding Judge, the contracting officer in a product or service classification appeal, and any other participant so designated at the discretion of the Presiding Judge. Parties will have full rights of participation in the proceeding and will be bound by the decision of the panel.

(c) *Who May Appeal.* Appeals from size determinations and product or service classifications may be filed with the Office of Hearings and Appeals by any of the following:

(1) Any interested person that has been adversely affected by a determination of a Regional Administrator, or his or her delegatee, or by the Associate Administrator for Finance and Investment made pursuant to § 121.8 of this part;

(2) Any interested person that has been adversely affected by a classification of a product or service by a contracting officer made pursuant to § 121.5 of this part; or

(3) The Small Business Administration Associate Administrator for the Small Business Administration program involved.

(d) *Where to Appeal.* Written Notices of Appeal conforming to paragraph (f) of this section, may be mailed to the Office of Hearings and Appeals, Small Business Administration, Washington, D.C. 20416, or may be personally delivered to the Office of Hearings and Appeals at 2100 K Street, NW., Washington, D.C. A submission shall be deemed to be filed on the date it is mailed, as indicated by the postmark, or on the date it is personally delivered to the Office of Hearings and Appeals.

(e) *Time Limits for Appeal.* The following time limits will apply to appeals filed pursuant to this section.

(1) Except as provided in paragraph (e)(2) of this section, an appeal from a size determination shall be filed in writing no later than thirty (30) calendar days after the date of receipt of such determination;

(2) An appeal from a size determination concerning a bidder or offeror in a pending procurement or a pending Government property sale shall be filed in writing no later than five (5) days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of the determination made by a Regional Administrator, or his or her delegatee. Unless written notice of such an appeal is filed within the prescribed time limit, the appellant will be deemed to have waived all rights of appeal insofar as the pending procurement or sale is concerned, but the appeal may proceed to final determination and shall apply to future procurements and sales.

(3) An appeal from a product or service classification shall be filed no later than ten (10) days, exclusive of Saturdays, Sundays, and legal holidays, before the bid opening day or deadline for submitting proposals or quotations in cases when the bid opening day or deadline for submitting proposals or quotations is more than thirty (30) days after the issuance of the invitation for bids or request for proposals or quotations. In cases where the bid opening day or deadline for submitting proposals or quotations is less than thirty (30) days after the issuance of the invitation for bids or request for proposals or quotations, the appeal shall be filed no later than five (5) days, exclusive of Saturdays, Sundays, and legal holidays, before the bid opening day or deadline for submitting proposals or quotations. An untimely appeal from a product or service classification will be dismissed.

(f) *Initiation of Appeal.* The document that initiates the appeal is hereafter called the Notice of Appeal. No particular form is prescribed for the Notice of Appeal. The appellant shall file the Notice of Appeal with the

Office of Hearings and Appeals, in writing and in duplicate. In the case of telegraphic notices, a duplicate is not required; however, a telegraphic notice shall be confirmed by next day mailing of a written Notice, in duplicate. In accordance with paragraph (n) of this section, the Notice of Appeal shall be certified and a copy shall be concurrently served by the appellant upon those parties and persons specified in paragraph (f)(6) of this section. Upon receipt of a copy of the Notice of Appeal, the Regional Office shall forthwith send the entire case file to the Office of Hearings and Appeals. The Notice of Appeal shall include the following information:

(1) Name, address and telephone number of the party filing the appeal, identification of the person to be contacted for service of correspondence, notices, orders, pleadings and requests for information pertaining to the appeal;

(2) The substance and date of the size determination or product or service classification from which the appeal is taken, including identification of the concern whose size is being determined, or the SIC or SBA size standard being applied;

(3) If applicable, the invitation for bids or contract number and date, and the name, address and telephone number of the contracting officer;

(4) A full and specific statement of the reasons why the size determination or product or service classification appealed is alleged to be erroneous;

(5) Presentation of arguments in support of such allegations; and

(6) A statement certifying that copies of the Notice of Appeal have been served upon the following, where applicable:

(i) The contracting officer;

(ii) The Small Business Administration official whose determination is appealed;

(iii) A protestant who is not the appellant;

(iv) The concern whose size status is at issue; and

(v) Any other identifiable interested person.

(g) *Notification of Filing of Appeal.* The Office of Hearings and Appeals will notify the parties and persons specified in paragraph (f)(6) of this section of the date it received the Notice of Appeal and the docket number assigned.

(h) *Scope of Appeal and Burden of Proof.* The Office of Hearings and Appeals will not consider issues not previously presented to the Small Business Administration official who made the size determination appealed unless such consideration is determined to be necessary to prevent manifest injustice to a party and such omission was not due to the fault of such party. The appellant shall have the burden of proof in the proceeding.

(i) *Statements of Interested Persons.* After a Notice of Appeal has been filed, any interested person may file with the Office of Hearings and Appeals a signed statement, in duplicate, supporting or opposing the appeal and presenting appropriate argument and evidence. Such statement shall be filed no later than five (5) days, exclusive of Saturdays, Sundays, and holidays, after the receipt of the Notice of Appeal served pursuant to paragraph (f) of this section, and shall, in accordance with paragraph (n) of this section, be certified and concurrently served upon parties and persons specified in paragraph (f)(6) of this section.

(j) *Enforcement and Extensions of Time Limitations.* Time limitations on all filings will be strictly enforced. Unless requested by the Office of Hearings and Appeals, late filings and filings not specifically provided for in this section, may be disregarded to avoid delay in disposing of the appeal. In the exercise of discretion and for good cause shown, the Presiding Judge may, after notice to all participants, waive any time limit set forth in this section, other than those time limits set forth in paragraph (e). A motion for an extension of time must be filed within the time period to which it applies.

(k) *Docket File.* Upon the receipt of a Notice of Appeal, the matter will be assigned a docket number. The docket file will consist of the Notice of Appeal, any responses thereto, the case file submitted by the Small Business Administration official, or any materials submitted by the contracting officer, including the related written determination of the official or officer, any additional pleadings, motions and other documents submitted pursuant to this section, unless not received into evidence by the Presiding Judge, the transcript or recording of any oral hearing or telephone conference, and any orders and decisions issued in the proceeding.

(l) *Public Access to Docket File.* The following rules will apply regarding public access to the docket file for a proceeding:

(1) Except as provided in paragraphs (l)(2) and (l)(3) of this section, the docket file will be available for public inspection in the Office of Hearings and Appeals during normal business hours and copies of such material may be obtained upon payment of the applicable charges.

(2) The following information in the docket file shall not be subject to public inspection or copying:

(i) Information subject to a protective order issued pursuant to paragraph (o)(2) of this section; and

(ii) Any proprietary information the withholding of which is provided pursuant to paragraph (n) of this section, or which is identified and contained in the case file submitted by the Small Business Administration official or the contracting officer.

(3) The case file submitted by the Small Business Administration official will be returned to such official upon termination of the proceeding.

(m) *Assignment of Three Judge Panel.* Upon receipt of a Notice of Appeal, the Assistant Administrator for the Office of Hearings and Appeals will assign the appeal to a panel of three Judges, one of whom (the Presiding Judge) will be designated to preside over the panel. The panel will have jurisdiction to investigate and decide the controversy and to take such further appropriate action as may be necessary to issue a decision in the matter in accordance with applicable agency policy, precedent, and law. A decision agreed upon by a majority of the panel will be the final decision of the Small Business Administration.

(n) *Filing and Service of Pleadings.* The following rules will apply to all pleadings, motions and other documents filed pursuant to this section.

(1) Except as provided in paragraph (n)(2) of this section, all pleadings, motions, and other documents filed pursuant to this section shall be served upon the Presiding Judge (once identified) and all other participants in the proceedings or their respective counsel or other representative in the proceeding, personally or by registered or certified mail, and shall be accompanied by certification of such service.

(2) Tax returns, confidential data on SBA Form 355 and any other evidence that constitutes proprietary information need not be served, so long as such deletions are identified and described in the copies served pursuant to this paragraph.

(3) All pleadings, motions and other documents filed pursuant to this section shall be signed by an authorized person, who shall certify as follows:

> "I have read this document and, under penalty of perjury and the sanctions imposed under 18 U.S.C. 1001, of which I am aware, I certify that, to the best of my knowledge, the statements made therein are true and correct, and that this document is not being filed for the purpose of delay or harassment."

(o) *Function of Presiding Judge.* The Presiding Judge of the panel to which the appeal is assigned is authorized to act upon and to dispose of all relevant motions, petitions, and other pleadings; to obtain such competent, material, and relevant facts as the Presiding Judge may deem necessary to a proper and just determination of the matters at issue, in an oral hearing or by other appropriate means (including, for example, telephone conferences); and to fix the time and place of any oral hearing or telephone conference. The Presiding Judge is also authorized to:

(1) Administer oaths and affirmations;

(2) Issue protective orders, and subpoenas as provided in paragraph (w) of this section;

(3) Request the attendance of Small Business Administration employees;

(4) Examine witnesses;

(5) Rule upon questions of procedure, evidence, policy and law, including the designation of party status in a proceeding and the nature and extent

of participation for all other participants;

(6) Take or cause depositions to be taken;

(7) Regulate the course of the oral hearing, maintain decorum, and exclude from such hearing any person engaging in contumacious conduct or otherwise disrupting such hearing;

(8) Require the filing of memoranda and the presentation of oral argument with respect to any question upon which the Presiding Judge is required to rule during the course of the hearing;

(9) Hold conferences for the settlement or simplification of the issues or for other appropriate purposes;

(10) Dispose of procedural requests and similar matters;

(11) Take action and make decisions in conformity with the applicable law, policy, and procedures of the Small Business Administration;

(12) Act on motions to enlarge, modify, or delete issues in the proceeding; and

(13) Impose appropriate sanctions, if any party fails to comply with an order of the Presiding Judge, including but not limited to:

(i) Drawing an inference in favor of the requesting party regarding the information sought;

(ii) Prohibiting the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, evidence relating to the information sought;

(iii) Permitting the requesting party to introduce secondary evidence concerning the information sought;

(iv) Striking any part of the pleadings of the party failing to comply with such request; or

(v) Taking such other appropriate action as is deemed necessary to serve the ends of justice.

(p) *Oral Hearings and Telephone Conferences.* The following rules will apply to oral hearings and telephone conferences:

(1) The Presiding Judge will determine the issues presented upon the documentary record. Only when the Presiding Judge determines, upon examination of the docket file and consideration of such additional facts as may be acquired on notice to partici-
pants, that there is a genuine dispu
as to any material fact of decision
significance which cannot be resolv
except by confrontation of witness
will an oral hearing be afforded.

(2) If the Presiding Judge dete
mines that there is a matter th
cannot be resolved other than by
telephone conference or an oral he
ing, he or she will fix a time and pla
for such conference or hearing to
solve such matter.

(3) Any oral hearing will be set a
site reasonably proximate and conv
ient to the parties and those parti
pants permitted to participate in t
oral hearing by the Presiding Jud
and notice thereof will set forth:

(i) A statement as to the purpose
the oral hearing; and

(ii) A statement as to the matters
fact and law involved and the iss
that will be heard.

(4) The Office of Hearings and
peals will provide a means for reco
ing oral hearings and telephone c
ferences at which evidence is taken
transcript or record, as applica
may be obtained upon payment of
applicable charges.

(q) *Prohibited Ex Parte Communi-
tions.* Except to the extent requi
for the disposition of *ex parte* matt
as authorized by law or regulation,
participant may consult a Judge o
fact or question of law at issue in
appeal except on notice and oppo
nity for all participants to particip

(r) *The Record.* The following r
will apply to the record compiled
the proceeding:

(1) A transcript or recording of
testimony and exhibits, and any ot
documents included in the docket
pursuant to paragraph (r)(1) of
section shall constitute the exclu
record for decision. Where the d
sion is based on official notice of a
terial fact not appearing in the rec
any participant may file a motion
later than five (5) days following
ceipt of the decision served purs
to paragraph (u) of this section, a
cating a contrary factual proposi
and setting forth the factual or l
basis for the challenge.

(2) The record in a proceeding
which an oral hearing has been
will be closed by an announcemen

that effect at such hearing by the Presiding Judge, when the taking of testimony has been concluded. When no oral hearing has been held, the Presiding Judge will inform the participants of the closing of the record by appropriate means. In the discretion of the Presiding Judge, the record may be closed as of a future specified date in order to permit the admission into the record of exhibits to be later prepared; *Provided* That the parties and other participants in the proceeding stipulate that they waive the opportunity to cross-examine or present evidence with respect to such exhibits. After the closing of the record, the transcript or recording of any testimony, together with all exhibits, will be certified by the Presiding Judge and filed in the docket file in the Office of Hearings and Appeals. A copy of such certification will be served on all participants in the proceeding.

(3) At any time during the course of the proceeding, or as directed by the Presiding Judge, but no later than five (5) days after receipt of notice of certification of the record made pursuant to paragraph (r)(2) of this section, any participant in the proceeding may file with the Presiding Judge a motion requesting the correction of a transcript, if any, which shall be accompanied by proof of service thereof upon all other participants in the proceeding. No later than five (5) days after the receipt of such a motion, other participants may file a response in support of, or in opposition to, such motion. Thereafter, the Presiding Judge will issue an order specifying the corrections to be made in the transcript. A copy of the order will be served upon all participants and will be made a part of the record. The Presiding Judge may, on his or her own motion, specify on notice to the participants corrections to be made in the transcript. Objection to any such proposed correction(s) shall be filed within three (3) days after receipt of such notice and such objection(s) will be the subject of appropriate rulings by the Presiding Judge.

(s) *Post-Hearing Procedures.* The following rules will apply to proposed findings and conclusions:

(1) After the conclusion of any oral hearing, any participant may, with the concurrence of the Presiding Judge, file proposed findings of fact and conclusions, briefs, and memoranda of law; *Provided,* That the Presiding Judge may, in any proceeding, direct any party to file proposed findings of fact and conclusions, briefs, and memoranda of law. Any proposed findings of fact, conclusions, briefs, and memoranda of law shall be filed within ten (10) days after receipt of notice of certification of the record pursuant to paragraph (r)(2) of this section, unless the Presiding Judge specifies otherwise.

(2) Proposed findings of fact shall be set forth in serially numbered paragraphs and shall set out with particularity all decisionally significant evidentiary facts developed on the record that are deemed to support the findings proposed, with citations to the transcript, where appropriate, and to other portions of the record relied on for each evidentiary fact. Proposed conclusions shall also be separately stated in serially numbered paragraphs. Proposed findings and conclusions may be limited to those issues that affect the interests of their proponent and may' be accompanied by supporting briefs.

(3) In the absence of a showing of good cause therefor, the failure to file proposed findings of fact, conclusions, briefs, and memoranda of law when directed to do so by the Presiding Judge, will be deemed to constitute a waiver of the right to object to the findings and conclusions of the panel.

(t) *Decision.* Following receipt of proposed findings and conclusions authorized or directed pursuant to paragraph (s) of this section or default in the making of such filings, or upon closing of the record when such filings have not been authorized or directed, the Presiding Judge will prepare a proposed decision containing findings of fact and conclusions, as well as the reasons therefor, with respect to all the decisionally significant material issues of fact and law presented on the record. The proposed decision will also contain a proposed order, and the proposed sanction, relief, or denial thereof appropriate in the circumstances.

The proposed decision will be circulated among the panel members for consideration and concurrence. Upon approval of that decision or a different decision by a majority of the panel, the decision will be issued; it shall be the final decision of the Small Business Administration and shall bind all parties to the proceeding.

(u) *Notice of Decision.* The Office of Hearings and Appeals will serve the decision upon all participants in the proceeding by certified mail. Where time is of the essence, notice of the ultimate determination may be communicated in a telegram or by telephone to the participants, to be followed by service of the full text.

(v) *Termination of Jurisdiction.* Except as provided in paragraphs (v)(1) and (v)(2) of this section, the authority of the panel over the proceeding shall cease upon issuance of the decision.

(1) Limited jurisdiction over the proceeding shall continue for the purpose of effecting certification, correcting the record and ruling on motions concerning official notice pursuant to paragraph (r) of this section.

(2) No later than thirty (30) days after service of the decision pursuant to paragraph (u) of this section, any participant may file a motion to reopen the proceeding for the limited purpose of presenting newly discovered evidence of decisional significance, together with a showing that such evidence was not available during the course of the proceeding, or could not have been available during that time upon the exercise of due diligence. The panel will dispose of such motion in such manner as to afford a just and proper disposition of the appeal.

(w) *Subpoenas.* The following rules will apply to subpoenas:

(1) Subpoenas will be authorized at the discretion of the Presiding Judge only with respect to oral hearings held pursuant to paragraph (p) of this section. No subpoenas may be issued against Small Business Administration personnel or for documents in the custody or control of the Small Business Administration.

(2) Subpoenas requiring the attendance and testimony of witnesses, and subpoenas requiring the production of any books, papers, records, contracts, agreements, and other documents relating to an appeal under this section shall be signed and issued by the Presiding Judge.

(3) Unless submitted on the record while an oral hearing is in progress, requests for a subpoena *ad testificandum* shall be submitted in writing, identifying the person to be subpoenaed and showing the relevance, materiality, and the basis for requiring the testimony of such person.

(4) Written requests for a subpoena *duces tecum* shall be verified, and shall specify with particularity the books, papers, and documents desired and the facts expected to be proved thereby. A showing shall also be made as to the relevance and materiality of the evidence sought.

(5) Requests for subpoenas shall be submitted by a party in triplicate, and may be made *ex parte*.

(6) Any person or entity against whom a subpoena is directed may, prior to the return date, file with the Presiding Judge a motion to quash or limit the subpoena, setting forth the reasons the subpoena should not be complied with or should be limited in scope. That motion must be made upon notice to all other parties in the proceeding.

(7) Notice, including a brief statement of the reasons therefor, will be given for the denial, in whole or in part, of a request for subpoena or of a motion to quash.

(8) A subpoena may be served by any person who is not a party to or participant in the proceeding and who is not less than 18 years of age.

(9) Service of a subpoena upon the person named therein shall be made by exhibiting the original subpoena to such person, by reading the original subpoena if such person is unable to read, by delivering the duplicate subpoena to such person, and by tendering the fees for one day's attendance at the proceeding to which such person is summoned and the mileage allowed by law. If the subpoena is issued on behalf of the United States or an officer or agency thereof, attendance fees and mileage need not be

tendered, but will be paid upon filing of an appropriate claim therefor.

(10) The person effecting service of a subpoena shall sign an affidavit thereof, stating the date, time, and manner of service.

(11) In case of failure to make service, the reasons for the failure shall be stated on the original subpoena by the person who attempted to make service.

(12) The original subpoena, bearing
or accompanied by the required affida-
vit or statement, shall be returned
forthwith to the Office of Hearings
and Appeals or, if so directed on the
subpoena, to the Presiding Judge
efore whom the person named in the
subpoena is required to appear.

(13) The attendance of witnesses and
he production of documentary evi-
ence may be required from any place
n the United States to any designated
lace of hearing. In case of disobedi-
nce of a subpoena, the Small Busi-
ess Administration may invoke the
id of any court of the United States
n requiring the attendance and testi-
nony of witnesses and the production
f documentary evidence.

(14) Witnesses who are subpoenaed
nd respond thereto are entitled to
he same fees, including mileage, as
re paid for like service in the courts
f the United States. Fees shall be
aid by the party at whose instance
he subpoena is issued.

(15) In the exercise of discretion, the
residing Judge authorizing and issu-
g any subpoena will, upon request or
pon his or her own motion, devise
nd provide such protective order(s) as
ay be necessary and appropriate to
rotect the witness and/or such books,
ocuments, materials, and records pro-
uced in response thereto, from har-
sment, undue expense, breach of
nfidentiality of information and
ta reasonably concluded to require
otection from general disclosure, or
r any other proper and relevant con-
deration.

(x) *Delegation of Authority When
dge Not Available.* In the event of
e absence or unavailability of the
esiding Judge or other member of
e panel to which the appeal is as-
ned, where such action is necessary,
y Judge in the Office of Hearings
d Appeals to whom such authority
is delegated, is authorized to participate in rendering a final decision and to dispose of any motions or other interlocutory matters, as appropriate, pertaining to such appeal.

(y) *Effective Date.* This section shall apply to all appeals for which a decision has not been made by the Size Appeals Board as of December 23, 1983.

[49 FR 5029, Feb. 9, 1984; 49 FR 13676, Apr. 6, 1984, as amended at 49 FR 50027, Dec. 26, 1984]

§ 121.12 Small business for paying reduced patent fees.

(a) Pursuant to Pub. L. 97-247, a small business concern for purposes of paying reduced fees under 35 U.S. Code 41 (a) and (b) to the Patent and Trademark Office means any business concern (1) whose number of employees, including those of its affiliates, does not exceed 500 persons and (2) which has not assigned, granted, conveyed, or licensed, and is under no obligation under contract or law to assign, grant, convey or license, any rights in the invention to any person who could not be classified as an independent inventor if that person had made the invention, or to any concern which would not qualify as a small business concern or a nonprofit organization under this section. For the purpose of this section concerns are affiliates of each other when either, directly or indirectly, one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. The number of employees of the business concern is the average over the fiscal year of the persons employed during each of the pay periods of the fiscal year. Employees are those persons employed on a full-time, part-time or temporary basis during the previous fiscal year of the concern.

(b) If the Patent and Trademark Office determines that a concern is not eligible as a small business concern within this section, the concern shall have a right to appeal that determination to the Small Business Administration. The Patent and Trademark Office shall transmit its written decision and the pertinent size determination file to the SBA in the event of such adverse determination and size appeal. Such appeals by concerns should be submitted to the SBA at 1441 L Street NW., Washington, D.C. 20416 [Attention: SBA Office of General Counsel]. The appeal should state the basis upon which it is claimed that the Patent and Trademark Office initial size determination on the concern was in error and the facts and arguments supporting the concern's claimed status as a small business concern under this section.

§ 121.13 Definition of small business financial institution for purposes of sections 8(d) and 15(g) of the Small Business Act.

(a) For the purpose of section 8(d) and 15(g) of the Small Business Act, a small financial institution is a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million.

(b) For purposes of this regulation, the term "assets" shall include all assets reflected on the institution's financial balance sheet for a given fiscal year and defined according to the Federal Financial Institution's Examination Council 034 call report form.

[49 FR 40400, Oct. 16, 1984]

PART 122—BUSINESS LOANS

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TABLE 1—ELIGIBLE ENERGY MEASURES

AUTHORITY: 15 U.S.C. 634(b)(6) and 636(a).

SOURCE: 50 FR 12494, Mar. 28, 1985, unless otherwise noted.

§ 122.1 Statutory provisions.

The authority for these loans is contained in Section 7(a) of the Small Business Act, as amended, 15 U.S.C. 636(a). See also 15 U.S.C. 636 (Note).

§ 122.2 Captions.

Captions are inserted as required by the FEDERAL REGISTER for convenience only and are not part of the substance of these regulations.

§ 122.3 Savings clause.

§ 122.3-1 Prior rules.

Financial assistance granted before March 28, 1985, shall be governed by the related contractual terms and the regulations then in effect. Nothing herein shall bar SBA enforcement action with respect to such financial assistance granted pursuant to contractual terms no longer in use and prior regulations no longer in effect.

[50 FR 12494, Mar. 28, 1985; 50 FR 13310, Apr. 4, 1985]

§ 122.3-2 Effect of invalidity.

If any section or part of a section of hese regulations should be adjudged invalid, only that part shall be invalid, and the other parts shall not be affected thereby.

§ 122.4 Applicability of other parts.

The Loan Policy and definitions of Part 120 of this chapter apply to the loans authorized in this part. Also applicable are Parts 112, 113, 116 and 117. With respect to any financial assistance of SBA, Part 112 prohibits discrimination on the grounds of race, color, or national origin. Part 113 prohibits discrimination based on race, color, religion, sex, marital status, handicap or national origin with respect to all recipients of SBA financial assistance.

Part 116 prescribes policies of general application set forth in several subparts. Subpart A sets forth SBA policies and criteria for giving special consideration to veterans and their survivors or dependents. Subpart B prescribes rules on the prohibition of SBA financial assistance for acquisition or construction in special flood hazard areas when persons eligible for flood insurance have not obtained it. Subpart C prohibits recipients of SBA financial assistance from using lead-based paint as described therein. Subpart D prescribes policies and procedures dealing with floodplain management and wetlands protection. Part 117 covers the prohibition of discrimination based on age.

§ 122.5 Application.

§ 122.5-1 Other financing.

Except as otherwise specified, before applying for SBA financial assistance, an applicant shall endeavor to obtain financing from other non-Federal sources, including (but not limited to) other resources of its owners, and private lending sources.

If an institution is unable or unwilling to make the loan, the applicant must then determine if the Lender would make the loan in participation with SBA as a guaranty or an immediate participation loan. (If a Lending Institution will make a loan in participation with SBA, the Lender, not the applicant, shall contact SBA.) SBA shall require satisfactory evidence concerning the Lending Institution(s) refusing to make, or to participate in, the loan. See §§ 120.3-4 and 120.103-1 of this chapter.

§ 122.5-2 Contents of application.

An applicant for SBA financial assistance in any form shall furnish [1] a history of the business, the nature of the business, the amount and purpose(s) of the loan, the collateral offered for the loan, and current financial statements, together with financial statements (or tax returns if appropriate) for the past three years. Annual financial statements shall be required from borrower thereafter, but SBA may also require more frequent reports. In addition, personal financial statements may be required, as applicable, from a proprietor, general partners, officers, directors, guarantors and holders of twenty percent or more of the equity of the applicant. Finanical statements from non-stockholder directors or officers may be waived by SBA.

(Approved by the Office of Management and Budget under control numbers 3245-0016 and 3245-0196)

§ 122.5-3 Direct assistance.

Subject to availability of funds, an applicant unable to obtain a loan or loan participation from a private lender (See § 120.3-4 of this chapter) may apply to SBA for a direct loan on a form provided by SBA. Such application shall be made to the SBA office serving the location of the proposed or existing business, but counseling may be obtained from any SBA office. (See § 101.3-1 of this chapter for the addresses of all SBA offices.)

(Approved by the Office of Management and Budget under control number 3245-0016)

§ 122.5-4 Approval or decline.

Applicants will be given notice of approval or decline by either the Lender (for a participation/guaranty loan) or by SBA (for a direct loan). The decline notification will include the reason(s) for the decline.

§ 122.5-5 Loan authorization.

If SBA approves a loan request, a loan authorization is issued. The authorization states the terms and conditions on which SBA is willing to make, participate in or guarantee a loan but it is not a contract to loan money.

(Approved by the Office of Management and Budget under control number 3245-0201)

§ 122.6 Loan terms.

§ 122.6-1 Maturities.

(a) Except as otherwise specified, a loan, including extensions and renewals, may be made for a period not to exceed twenty-five years, except that such portion of a loan made for the purpose of acquiring real property or constructing, converting or expanding facilities may have a maturity of twenty-five years plus such additional period as may be required to complete such construction, conversion or expansion.

(b) The maximum maturity shall not be available for every loan. The maturity of each loan will be the shortest feasible term commensurate with the repayment ability of the borrower and shall not exceed ten years, except when the loan finances real estate or the construction or the acquisition of equipment with a useful life exceeding ten years. Amortization will generally require equal monthly payments of principal and interest but may be adjusted to accommodate the cash flow of the borrower. See § 122.8-4(g) of this part. In addition, SBA may extend the maturity of a loan before October 1, 1985 pursuant to section 1902 of Pub. L. 97-35, approved August 13, 1981, conditioned in the case of a participation upon the concurrence of the participant, the holder in due course (if any) and the borrower, or refinance such loan with an extension of its term. The aggregate term of such extended or refinanced loan shall not exceed the maximum maturity permitted by this paragraph and shall be repaid in equal installments of principal and interest. SBA may also extend the maturity of or renew a loan pursuant to section 7(c)(1) of the Act (including any loan transferred to SBA pursuant to Reorganization Plans No. 2 of 1954 and No. 1 of 1957) for additional periods not to exceed ten years beyond their original maturity, limited to such periods of time as appear necessary to avoid forced liquidation of loans. Extensions are granted under the preceding sentence only when it appears that no other course will result in a greater or earlier recovery of the indebtedness.

§ 122.6-2 Grace periods.

SBA may defer initial payments for a grace period, and use such other methods as it deems necessary and appropriate to assure the successful establishment and operation of the borrower.

§ 122.6-3 Moratorium.

SBA may suspend or undertake borrower's obligations to pay principal and interest in certain circumstances and on certain conditions. See Part 131 of this title.

§ 122.7 Loan amounts.

Limits on loan amounts apply to the combined aggregate amount of all loans to a given borrower under this part, including such borrower's affiliates, as defined in § 121.3(a) of this title.

§ 122.7-1 Direct loans.

The statutory limit for direct loans is $350,000. SBA has established an administrative limit of $150,000. Regional Administrators may authorize, in writing, the acceptance of an applica-

ion that exceeds the administrative
out not the statutory limit.

122.7-2 Immediate participation.

The statutory limit on SBA's portion
of an immediate participation loan is
he lesser of 90 percent of the loan, or
350,000. The administrative limit,
owever, is the lesser of 75% of the
oan, or $150,000. Regional Adminis-
rators may allow exceptions to the
dministrative dollar limit, up to
350,000. District directors may make
xceptions to the percentage limit if
he participant's legal lending limit
recludes a 25 percent exposure. In
uch cases the Lender will be required
o participate up to its legal lending
imit, but in no event less than 10 per-
ent.

122.7-3 Guaranty loans.

SBA's exposure on guaranty loans
hall not exceed $750,000 in any cir-
umstance. The percentage of the
BA guaranty shall not exceed the fol-
owing:

(a) *Guaranty of loans not to exceed
155,000.* SBA shall guarantee at least
0 percent of a loan so long as the
otal amount outstanding (including
he loan under consideration) does not
xceed $155,000, except as permitted
nder paragraph (c) of this section.

(b) *Guaranty of loans in excess of
155,000.* SBA shall guarantee no more
han 85 percent and not less than 70
ercent of loans in excess of $155,000
o long as the total amount approved
nd outstanding does not increase
BA's exposure beyond $750,000, sub-
ect to paragraph (c) of this section.
ecisions to guarantee such loans in
mounts between 70 percent and 85
ercent shall be made on a case-by-
ase basis. The percentage guaranteed
hall not influence loan approvals. A
ender's request for less than a 70 per-
ent participation by SBA shall not be
pproved unless a lesser percentage is
ecessary due to the statutory
500,000 ceiling on SBA exposure.

(c) *Refinancing.* SBA shall guaran-
e no more than 80 percent of that
ortion of a loan used to refinance a
ebt owed to a bank or other lending
stitution. Therefore the blended
uaranty percentage of the total loan
ill reflect the respective percentages of guaranty for the refinancing and the remaining portion of the loan. Until October 1, 1985, SBA shall not refuse to guarantee a loan solely because such loan will be used to refinance all or any part of the outstanding indebtedness of a small concern unless:

(1) The creditor is likely to suffer a loss if the loan is not refinanced and SBA is likely to sustain part or all of any loss which would have otherwise been sustained by the creditor, or

(2) SBA determines that refinancing the debt will not benefit the small concern.

[50 FR 12494, Mar. 28, 1985, as amended at 51 FR 18437, May 20, 1986; 53 FR 35459, Sept. 14, 1988]

§ 122.8 Interest rate.

§ 122.8-1 Direct loans.

The rate of interest on direct loans and SBA's share of immediate participation loans is determined by a statutory formula based on the cost of money to the Federal government. No later than the 10th day of each calendar quarter (Jan. 10, April 10, July 10, and Oct. 10) SBA shall publish such rate in the FEDERAL REGISTER for such quarter. (The rate in effect at any time is available from the local SBA offices.)

§ 122.8-2 Immediate participation.

The maximum rate a Participating Lender shall charge on its share of an immediate participation loan shall be the lesser of (a) the rate permitted under the applicable usury statute, or (b) one percent less than the maximum rate permitted by SBA policy for a guaranteed loan of the same maturity, published from time to time in the FEDERAL REGISTER and available from local SBA offices.

§ 122.8-3 Guaranty loans.

A Participating Lender may establish an interest rate that is legal and reasonable. SBA publishes from time to time in the FEDERAL REGISTER the maximum rate permitted. Such rate information is available from local SBA offices.

§ 122.8–4 Variable (fluctuating) rate.

A Participating Lender may utilize a fluctuating rate of interest. SBA's maximum allowable rates apply only to the initial rate as of the date the loan application was received by SBA. SBA's approval of the use of a variable interest rate shall be subject to the following conditions:

(a) *Frequency.* The fluctuation may occur no more frequently than monthly, except for the first fluctuation, which may occur on the first business day of the month following initial disbursement: *Provided,* That with respect to any loan made prior to April 27, 1984, utilizing a quarterly fluctuation, the interest rate may be changed to a monthly fluctuation with the prior written consent of the borrower, Participating Lender, SBA, and Registered Holder (if any).

(b) *Commencement of fluctuation.* Fluctuation periods may commence on the first business day of the month following initial disbursement.

(c) *Basis for fluctuation.* The note rate must rise and fall on the same basis. Where a participant establishes a floor and ceiling for the fluctuating rate, the difference between the initial rate and the ceiling rate may be no greater than the difference between the initial rate and the floor rate.

(d) *Base rate.* The base rate shall be the low New York prime rate in effect on the first business day of the month, as printed in a national financial newspaper published each business day, or the SBA Optional peg rate which SBA publishes quarterly in the FEDERAL REGISTER.

(e) *Maturities under 7 years.* For loans with maturities under seven years, the maximum interest rate shall not exceed two and one-quarter (2¼) percentage points over the base rate.

(f) *Maturities of 7 years or more.* For loans with maturities of seven or more years, the maximum interest rate shall not exceed two and three-quarters (2¾) percentage points over the base rate.

(g) *Amortization.* Amortization shall require equal monthly payments combining principal and interest, and may be computed on the basis of an interest rate higher than the interest rate prevailing at the date of the note to insure that future payments will be sufficient in the event of a rise in the base rate. With SBA prior approval, unequal payments or fixed payments of principal plus interest may be agreed upon on a case-by-case basis.

(h) *Pilot Project.* Pursuant to § 120.1–2 of this chapter, for a period of one year from April 27, 1984, and only for the States of New Jersey, New York, the Commonwealth of Puerto Rico (Region II); Iowa, Kansas, Missouri, Nebraska (Region VII); and Arizona, California, Hawaii, Nevada (Region IX), the maximum initial interest rate on a fluctuating rate loan shall be the State legal rate applicable to such loan. Thereafter, the rate may fluctuate and the loan be amortized as set forth in this section: *Provided,* That the reference to percentage point limits is not applicable. If the guaranteed portion of a loan made pursuant to this subparagraph is transferred as provided in § 120.301–2 of this part to a third party within six months following full disbursement, such transfer shall be at a price which will not result in a differential greater than three percentage points (three hundred basis points) between the interest rate paid by the borrower and the coupon rate received by the investor.

[50 FR 12494, Mar. 28, 1985, as amended at 51 FR 20248, June 4, 1986]

Subpart B—Special Purpose Loans

§ 122.50 Small general contractors.

§ 122.50–1 Policy.

The Act authorizes loans to contractors to finance residential or commercial construction or rehabilitation provided that loan funds are not used primarily for the acquisition of land. The terms "construction" and "rehabilitation" as used in this section apply only to work done on-site, construction and rehabilitation of the structure, above or underground utility connections and landscaping. Not more than five (5) percent of the loan proceeds can be used for community improvements that benefit more than the structure financed with the SBA loan. Examples include streets, curbs, open spaces and similar improvements. These loans can be used for individual structures only: *Provided, however,* That an SBA loan may be used for more than one individual structure if each structure is separately identified, the loan proceeds for each structure are identified separately, and the amount that must be paid on the loan to effect transfer of clear title on each structure as sold is shown. Such loans are not prohibited by § 120.102-8 of this title. These loans may be available under the following conditions:

§ 122.50-2 Demonstrated ability.

The applicant shall be a construction contractor or homebuilder with a demonstrated managerial and technical ability in profitable construction or rehabilitation projects of a comparable type and size. Joint ventures or other organizations that have no history or are organized only for a specified project are not eligible. A portion of the work may be subcontracted, but on subcontracts in excess of $25,000 a one-hundred percent payment and performance bond may be required.

(Approved by the Office of Management and Budget under control number 3245-0077)

§ 122.50-3 Maturity.

The maturity of the loan shall not exceed thirty-six months plus the estimated time to complete the construction or rehabilitation.

§ 122.50-4 Purpose of loan.

Loan proceeds shall be used solely for the direct expense of acquisition, immediate construction and/or prompt significant rehabilitation of residential or commercial structures for sale. For this purpose "significant" rehabilitation means rehabilitation costing more than one-third (⅓) of the purchase price or fair market value at time of loan application. Not more than twenty (20) percent of the loan proceeds shall be used for the acquisition of land.

(Approved by the Office of Management and Budget under control number 3245-0077)

§ 122.50-5 Investment property prohibited.

Loan funds shall not be used to purchase vacant land for possible future construction or to operate or hold rental property pending future rehabilitation. Loan funds shall not replace or free applicant's funds for these purposes.

§ 122.50-6 Rental.

The constructed or rehabilitated structures shall not be rented, in whole or in part, pending sale, without SBA's prior written approval.

§ 122.50-7 Sale of entire property.

Loan proceeds shall not be used as a construction loan to be repaid with permanent financial if the applicant or its affiliate retains title. The sale of the property must be both a beneficial and a legal change or ownership in the title to the property.

§ 122.50-8 SBA's Lien.

SBA shall have not less than a second lien on the property as collateral. All prior liens shall permit the release of individual parcels upon payment of a predetermined amount (so the buyer of each parcel can get a clear title) and the sum of all liens, including SBA's shall not exceed eighty (80) percent of the fair market value of the completed structure.

§ 122.50-9 Application.

The application shall include three letters in addition to the regular requirements of § 122.5-2. (A Participating Lender may provide the necessary written assurance instead of three such separate letters). The three letters are (a) from a mortgage lender doing business in the project area advising whether permanent mortgage money is normally available to qualified purchasers of comparable real estate at the project location; (b) from an independent, licensed real estate broker with at least three years experience in the project area advising whether a market exists for the proposed structure and whether the property's monetary and architectural values are compatible with other structures in the neighborhood; (c) from an independent licensed architect, appraiser or engineer who shall agree to make all construction inspections and certifications needed to support interim disbursements. (Inspection fees may be paid from loan proceeds.)

§ 122.51 Handicapped.

§ 122.51-1 Policy.

The Act authorizes loans to assist a public or private organization for the handicapped or to assist a handicapped individual in establishing, acquiring or operating a small concern.

§ 122.51-2 Definitions.

(a) *HAL-1* is the designation of a loan to a nonprofit public or private organization for the employment of the handicapped. HAL-1 applicants are not subject to Part 121 of this title.

(b) *HAL-2* is the designation of a loan to a handicapped individual or a small business which is wholly owned by a handicapped individual(s). Such loans shall comply with the requirements of Parts 120 and 121 of this title, and direct loans are subject to the availability of funds.

(c) *Organization for the Handicapped* means one which:

(1) Is organized under the laws of the United States or any State, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual, and which is operated in the interest of handicapped individuals;

(2) Complies with all occupational health and safety standards prescribed by the Secretary of Labor; and,

(3) Employs in the production of commodities and the provision of services during any fiscal year in which it received financial assistance under this subsection, handicapped individuals for not less than 75 per centum of the man-hours required for the production or provision of the commodities or services.

(d) *Handicapped individual* means a person who has a physical, mental or emotional impairment, defect, ailment, disease or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable. For HAL-2 purposes a partnership or corporation must be 100 percent owned by handicapped individuals.

(e) *Supportive services* refers to expenses incurred by HAL-1 organizations to subsidize wages of low producers, health and rehabilitation services, management, training, education and housing of handicapped workers and other such uses.

§ 122.51-3 Interest rate.

Direct loans and SBA's share of immediate participation loans are subject to an administrative limit of $150,000 and shall bear interest at a rate of three (3) percent. There is no separate interest rate on guaranty loans. See § 122.8-3 of this part.

§ 122.51-4 Repayment ability.

(a) *Reasonable doubt.* In the application of § 120.103-2 of this chapter to loans under this § 122.51, reasonable doubt shall be resolved in favor of the applicant.

(b) *Capability and experience.* HAL-1 applicants must submit evidence that the organization has the capability and experience to perform successfully, but evidence of repayment ability from the earnings of the organization is not necessary provided other sources of repayment are reasonably established.

(c) *Collateral*—(1) *Assignment of proceeds.* Loans to finance Federal Government contracts may require an assignment of the proceeds of the contracts.

(2) *Personal guarantees.* Personal guarantees of the officers and directors of a HAL-1 organization shall not be required but may be accepted if offered.

(Approved by the Office of Management and Budget under control number 3245-0016)

§ 122.51-5 Application.

(a) *Contents of HAL-1 application.* A HAL-1 applicant shall submit copies of bylaws, incorporation papers, Internal Revenue Service certification of tax-exempt status, recognition/approval by an appropriate State, local or Federal rehabilitation agency or

ther evidence that it meets the defi-
ition of a HAL-1 organization, includ-
ıg the percentage of man-hours per-
ormed by handicapped persons. The
pplicant shall also show that private
redit is not available and that funds
rom other Government programs are
ot being duplicated by SBA and that
ontributions from foundations, State
und raising activities (including tax
ssessements) and other traditional
unding will not be diminished as a
esult of an SBA loan. Notwithstand-
ıg § 120.102-10 of this chapter, a
AL-1 organization shall not be con-
dered to be an associate of the lender
olely because one or more of the or-
anization's officers or directors are
so officers, directors or holders of 10
more percent of the stock of the
nder: *Provided, however,* That such
erson shall have no part in the lend-
's decision to participate in the loan.
(b) *Contents of HAL-2 application.*
HAL-2 applicant shall submit writ-
n information from a physician, psy-
hiatrist or other qualified profession-
as to the permanent nature of the
andicap and the limitations it places
n the applicant.

pproved by the Office of Managemen
d Budget under control number 3245-
16)

122.51-6 Use of proceeds.

(a) *HAL-1.* HAL-1 loan proceeds may
used for purposes consistent with
120.101 and 120.102 of this chapter,
cept that loan funds cannot be used
r supportive services, see § 122.51-
e). Further, the use of SBA funds to
ırchase or construct facilities is pro-
bited when construction grants and
ortgage assistance are available from
ıother Federal source.
(b) *HAL-2.* HAL-2 funds may be
ed to effect a change of ownership
thout regard to § 120.102-6 of this
apter.

22.52 Low-income areas.

The Act authorizes loans to small
ncerns with particular emphasis on
e establishment, preservation and
rengthening of small concerns locat-
in urban and rural areas with high
oportions of unemployed (as desig-
ted by the Department of Labor) or
w-income individuals or owned by
low-income individuals (income is not adequate to satisfy basic family needs). Partnerships and corporations must be over 50 percent owned by low-income individuals to qualify under the low-income criteria. Program requirements and credit standards outlined in other sections of this regulation will not be relaxed to accommodate loan applicants qualifying under this Section.

§ 122.53 Energy conservation.

§ 122.53-1 Policy.

The Act authorizes loans to assist a small concern to design architecturally or to engineer, manufacture, distribute, market, install or service energy measures designed to conserve the Nation's energy resources. See Table 1 for eligible energy measures.

§ 122.53-2 Energy measures defined.

Energy measures include:

(a) Solar thermal energy equipment which is either of the active type based on mechanically forced energy transfer or of the passive type based on convective, conductive or radiant energy transfer or some combination of these types;

(b) Photovoltaic cells and related equipment;

(c) A product or service the primary purpose of which is conservation of energy through devices or techniques which increase the energy efficiency of existing equipment, methods of operation or systems which use fossil fuels, and which is on the Energy Conservation Measures list of the Secretary of Energy (see Table 1) or which the Administrator determines to be consistent with the intent of this subsection;

(d) Equipment the primary purpose of which is the production of energy from wood, biological waste, grain or other biomass source of energy;

(e) Equipment the primary purpose of which is industrial cogeneration of energy, district heating or production of energy from industrial waste;

(f) Hydroelectric power equipment;

(g) Wind energy conversion equipment; and

(h) Engineering, architectural, consulting or other professional services which are necessary or appropriate to aid citizens in using any of the measures described in paragraphs (a) through (g) of this section.

§ 122.53-3 Use of proceeds.

Loan proceeds may be used to acquire vacant land immediately necessary for the construction of a plant and for buildings, machinery, equipment, furniture, fixtures, facilities, supplies or materials for eligible energy measures. Working capital loans shall be made only to the extent it is demonstrated to SBA's satisfaction that the proceeds will be used for entry into or expansion in the area defined above as energy measures. The applicant may be a new business or an existing business that is expanding. Loan funds shall not be used primarily for research and development: *Provided, however,* That up to 30 percent of the loan proceeds may be used for further development of a product or service already on the market or where the remaining development of a product or service may be completed under a business plan that provides reasonable assurance of repayment.

§ 122.53-4 Repayment ability.

Recognizing that greater risk may be associated with these energy measures, the status of these loans need not be as sound as for other loans authorized under this part. In order to determine "sound value", SBA will consider such factors as quality of the product or service, technical qualifications of the applicant's management and employees, sales projections and the applicant's financial status.

§ 122.54 Loans for exporters.

§ 122.54-1 Policy.

The Act authorizes a revolving line of credit for export purposes to enable small concerns to develop foreign markets and for pre-export financing. No such credit shall be extended for a period or periods exceeding eighteen months.

§ 122.54-2 Eligibility.

An applicant for an Export Revolving Line of Credit (ERLC) loan, in addition to meeting the eligibility criteria applicable to all section 7(a) loans, shall have been in operation for at least 12 full months prior to filing an application. This 12-months requirement may be waived by the appropriate SBA regional office if the management of the applicant has sufficient export trade experience or other management ability to warrant an exception to the general rule. Waivers can be made only by regional office officials who have delegated authority to approve ERLC loans.

§ 122.54-3 Use of proceeds.

Proceeds of an ERLC loan can be used only to penetrate or develop a foreign market and to finance labor and materials for pre-export production. Professional export marketing advice or services, foreign business travel or participation in trade shows are examples of eligible expenses to develop or penetrate a foreign market. The cost of acquiring or renting office or commercial space in a foreign country, equipping such an office, or wages for a staff in such an office are examples of ineligible uses of proceeds.

§ 122.54-4 Fees.

In addition to other allowable fees [see § 120.104-2 of this chapter], the participant in an ERLC loan may charge the borrower a commitment fee equal to one-fourth (¼) of one (1) percent of the loan or $200, whichever is greater. This fee shall not be charged until the SBA has approved the lender's request for guaranty.

§ 122.54-5 Collateral.

Only collateral that is located in the United States, its territories and possessions shall be acceptable security for these loans.

§ 122.54-6 Additional loan conditions.

(a) *Cash flow projection.* All ERLC loan applications shall include a projected cash flow chart for the term of the loan that supports the need for the funds and that evidences repayment ability. The projection must cover the applicant's total operation and clearly identifies the use(s) of the loan proceeds and source(s) or repayment.

(b) *Monthly progress reports.* The ERLC borrowers must submit monthly progress reports to the Lender and explain discrepancies between the projected cash flow and the progress report.

(Approved by the Office of Management and Budget under contract number 3245-0196)

§ 122.55 Qualified employee trust.

§ 122.55-1 Policy.

The Act authorizes guaranty loans to:

(a) *Finance growth.* A qualified or other employee trust which may be treated as a qualified employee trust (see § 122.55-5 below), that represents at least 51 percent of the employees and that is maintained by a continuing small concern which is seeking to finance its corporate growth through the use of a loan from the trust; or

(b) *Change of ownership.* A qualified or other employee trust representing at least 51 percent of the employees, to purchase at least 51 percent of the voting control of a business operated for profit which is (1) a small concern or (2) a business which is other than small and controlled by another person or entity if, after the purchase is accomplished, such business would be a small concern. Such purchase shall be deemed completed when at least 51 percent of the total voting stock of the employer concern is registered in the name of the qualifying employee trust. In these cases the trustee must certify, without limitation, that

(i) Subsequent to such purchase, the small business will be a corporation which

(A) Is a small concern pursuant to Part 121 of this chapter, and

(B) Is not under the effective control (as defined in Part 121 of this title), directly or indirectly, of the seller(s), and

(ii) Not later than the date the guaranteed loan is repaid (or as soon thereafter as is consistent with the requirements of the Internal Revenue Code) at least 51 percent of the total voting stock of the small concern shall be allocated to the accounts of at least 51 percent of the employees entitled to share in such allocations.

(iii) There will be annual reviews by the plan participants or by the trustee of the role in management of employees entitled to share in the allocations in the management of such concern,

(iv) There will be adequate management to assure management expertise and continuity, and

(v) The trustee shall report annually to the lender with respect to the requirements of this section.

§ 122.55-2 Definitions.

The following definitions do not amend or modify the definitions of the Internal Revenue Code (26 U.S.C. 4975(e)(8)), or the Treasury or Labor Department definitions in their respective regulations. As used in this subpart:

Employee means, in the case of a loan not involving a change of majority ownership of the employer concern's voting stock, every person who has been on the payroll of the employer concern as a permanent, full-time employee in any capacity for at least 30 days prior to the date SBA receives the application for a loan guarantee. In case of a loan'guarantee to an employee trust to effect a change of the majority ownership (at least 51 percent) of the employer concern, employee means every person on the payroll of such concern as a permanent, full-time employee in any capacity at the time such majority ownership is acquired. (Any person who is employed for 1,000 or more hours over 12 consecutive months is considered a full-time, permanent employee).

Employee organization means an entity representing at least 51 percent of the employees of the employer concern and which maintains a trust treated as an employee trust.

Employee trust means a qualified employee trust or a trust (described in § 122.55-5(b)) maintained by an employee organization.

Employer concern means the present, or prospective, corporate business concern with respect to which an employee trust is receiving an SBA loan guarantee and which qualifies (or will qualify) as small under Part 121 of this chapter.

ESOP means an employee stock ownership plan as defined in the Internal Revenue Code (26 U.S.C. 4975(e)(8)).

Qualified employee trust means, with respect to a small business concern, a trust which forms a part of an ESOP (or a part of an employee benefit plan that is treated as an ESOP for SBA loan guarantee purposes):

(a) Which is maintained by such concern,

(b) Which represents at least 51 percent of the employees;

(c) Which provides that each plan participant is entitled to direct the plan how to vote the qualifying employer securities which are or will be (as the SBA guarantee loan is repaid and encumbrances are removed) allocated to the account of such participant with respect to corporate matters which by law, charter or by-laws must be decided by a majority vote of outstanding qualifying employer securities voted; and

(d) Which the Internal Revenue Service has qualified in writing or which has been exempted in writing from appropriate Labor Department regulations governing Employee Benefit Plans under ERISA.

Qualifying employer securities means, for SBA purposes, and employer security which is (a) stock or otherwise an equity security or (b) a bond, debenture, note, certificate or other evidence of indebtedness which is described in the ESOP provisions of the Internal Revenue Code. Warrants and options are excluded.

§ 122.55-3 Amount of loan.

The $750,000 statutory limit which SBA may guarantee applies to the combined total of all obligations of the qualified employee trust, the employer concern and all its other affiliates in the aggregate.

[50 FR 12494, Mar. 28, 1985, as amended at 53 FR 35459, Sept. 14, 1988].

§ 122.55-4 Exceptions to other SBA regulations.

(a) *Guaranty loan only.* SBA's assistance is available only as a loan guaranty.

(b) *Repayment ability.* In determining whether a reasonable assurance of repayment exists,

(1) SBA shall consider the earnings history and projected future earnings of the employer concern together with its ability to make the necessary payments to the trust. The trustee must document in the application that funds generated from the employee trust will enable the small business concern to overcome present competitive difficulties, if any, which may have an adverse impact on the small concern's prospects of success, including (without limitation) plant obsolescence or the need for regulatory compliance.

(2) SBA shall not consider the personal assets of the employee-owners who are members of the employee organization. However, SBA must have evidence that financial assistance is not otherwise available by utilizing the personal resources and credit of the principals of the employer concern who are not participating in the employee organization, the resources and credit of the employer concern or the sale of those employer assets that are not assential to the operation of the business or its healthy growth.

(c) *Experience or assets of employees.* The individual personal assets of the employee-owners shall not be used as criteria in determining whether to guarantee a loan: *Provided, however,* That SBA may consider business experience, where certain employee-owners assume managerial responsibilities. The small concern must maintain an adequate managerial capacity which may be derived from contracts with employee-owners, or with others. An employee trust relying on the expertise of other than employee-owners shall endeavor to train employee-owners for managerial responsibilities in order to accelerate the assumption of such responsibilities by employee-owners no later than the date the guaranteed loan is repaid.

(Approved by the Office of Management and Budget under control number 3245-0016)

§ 122.55-5 Eligibility.

(a) *Qualified employee trust.* A qualified employee trust shall be eligible for an SBA loan guarantee to assist an employer concern if the trustee of the trust enters into an agreement with SBA which is binding on both the trust and the small concern and which provides that:

(1) The SBA guaranteed loan shall be used solely for the purchase of qualifying employer securities;

(2) The employer concern agrees to use funds received from the employee trust solely for the business purposes for which the loan was guaranteed;

(3) The employer concern agrees to provide the funds necessary for the trust to repay the loan principal plus interest;

(4) The property of the employer concern shall be available as security for repayment of the loan;

(5) All unencumbered qualifying employer securities acquired by the trust using SBA guarantee loan funds shall be allocated to the accounts of the plan participants who are entitled to share in the allocation;

(6) Each plan participant has a nonforfeitable (vested) right, not later than the date such loan is repaid, to all such allocated qualifying employer securities which are acquired with SBA guaranty loan funds;

(7) The employer concern agrees that an employee organization owning less than 51 percent of the voting control will have a 90 day "right of first refusal" to acquire the business before the business is relocated, sold, liquidated or loses its identity as an independently owned and operated small concern by any means other than court action; and

(8) The employer concern has placed no maximum or minimum limits on the percentage of voting stock that the employee organization is allowed to purchase and control.

(b) *Trust equivalent to a qualified employee trust.* A trust may be treated as a qualified employee trust for the purposes of an SBA loan guaranty if:

(1) Such trust is maintained by an employee organization which represents at least 51 percent of the employees of such concern;

(2) The trust is part of a plan which constitutes an employee benefit plan under the Labor Department regulations implementing ERISA and has a written Labor Department exemption from certain prohibited loan transactions. The plan must provide for the following:

(i) Be designed to invest primarily in qualifying employer securities;

(ii) Stipulate that each plan participant is entitled to direct the trustee in the manner of voting all qualifying employer securities acquired with SBA loan guarantee funds that have been allocated or, as the SBA loan is repaid, will be allocated to the participants' accounts, on all corporate matters which, by law, charter or by-laws, must be decided by a majority vote of the qualifying employer securities voted;

(iii) Provides that each participant who is entitled to distribution from the plan has a right, with respect to qualifying employer securities not readily tradable on an established market, to require that the employer concerned repurchase such securities under either a fair valuation formula, appraisal requirement or other method, any of which the Internal Revenue Service or the Labor Department have accepted in writing;

(iv) Provides procedures for including future employees in the plan; and

(3) The trust, with respect to an SBA loan guaranty, enters into an agreement with SBA setting forth the provisions outlined in paragraph (a) of this § 122.55-5.

§ 122.56 Veterans loan program.

§ 122.56-1 Policy.

The statutory authorities for these loans appear in Pub. L. 97-377 (96 Stat. 1871), Pub. L. 97-72 (95 Stat. 1055), and Section 7(a) of the Act.

§ 122.56-2 Direct loans.

Only SBA direct financial assistance is available to eligible veterans under this program. Private sector financing and SBA guaranteed loans must be unavailable before a direct loan can be considered.

§ 122.56-3 Eligibility.

(a) *Eligible veterans.* Veterans eligible for this program include the following:

(1) Vietnam-era veterans who served for a period of more than 180 days, any part of which was between August 5, 1964, and May 7, 1975, and were discharged other than dishonorably.

(2) Disabled veterans of any era with a minimum compensable disability of 30%, or a veteran of any era who was discharged for disability.

(b) *Ownership percentage.* The small business concern must be owned (a minimum of 51%) by one or more eligible veterans.

(c) *Management requirements.* Management and daily operations of the business must be directed by one or more of the veteran owners of the applicant whose veteran status was used to qualify for the loan.

§ 122.56-4 Single loan benefit.

The veteran status of an individual may only be used once to qualify for an SBA loan. After having received an SBA loan with eligibility based on veteran status, second or refunding loans can be considered only under the regular business loan program or based on the ownership by other eligible veterans (51% minimum ownership by persons of unused eligibility). Individuals who formerly received SBA loans with eligibility based on veteran status have used their loan benefit and may not be considered for the veterans loan program.

TABLE 1—ELIGIBLE ENERGY MEASURES

Subject to the requirements and limitations set forth in Title 10, Code of Federal Regulations, Chapter II, § 450.32 (1984), an energy conservation measure shall be—

(a) Ceiling insulation in a residential or commercial building which is a material which is installed on the surface of the ceiling facing the building interior or between the heated top level living area and the unheated attic space and which resists heat flow through the ceiling;

(b) Wall insulation in a residential or commercial building or industrial plant, which is a material which is installed on the surface facing the building interior or in the cavity of an exterior wall and which functions to resist heat flow through the wall;

(c) Floor insulation in a residential or commercial building, which is a material which resists heat flow through the floor between the first level heated space and the unheated space beneath it, including a basement or crawl space;

(d) Insulation for hot bare pipes in a residential or commercial building or industrial plant, which is a material which resists heat flow from the pipes to the surrounding space;

(e)(1) Caulks and sealants in a residential or commercial building or industrial plant, which are nonrigid materials placed in joints of buildings to prevent the passage of heat, air and moisture;

(2) Weatherstripping in a residential or commercial building or industrial plant, which consists of narrow strips of flexible material placed over or in movable joints of windows and doors to reduce the passage of air and moisture;

(f) Roof insulation in a commercial building or industrial plant which is insulation placed on the surface of the roof facing the building interior or between a roof deck and its water repellent roof surface;

(g) Clock thermostat in a residential building, which is a temperature control device for interior spaces incorporating more than one temperature control point and a clock for switching from one control point to another;

(h) Exterior insulation for a hot water heater in a residential or commercial building or industrial plant, which is a material placed around the tank which resists the heat flow from the hot water heater to its surrounding space;

(i) Insulation for forced air ducts in a residential or commercial building or industrial plant, which is a material which resists heat flow from the duct to its surrounding space;

(j) Storm window in a residential or commercial building which is an extra window, normally installed to the exterior, but which may be installed to the interior, of the primary or ordinary window, to increase resistance to heat flow and to decrease air infiltration;

(k) Efficient lighting fixture or lamp in a residential or commercial building or industrial plant, which is one which—

(1) Replaces an incandescent fixture or lamp with a type of lighting system including fluorescent, mercury vapor, metal halide, and high pressure sodium or ellipsoidal reflector lamps; or

(2) Replaces a mercury vapor fixture or lamp with a high pressure sodium lighting system.

(l) Mixing valve for a hot water supply line in a residential or commercial building or industrial plant, which is a type of valve mounted in the hot water supply line, close to the water heater, which mixes cold water with hot, reducing the temperature of the water in the hot water distribution system;

(m) Flow restrictor for hot water lines in a residential or commercial building or industrial plant, which is a device that limits the rate of flow of hot water from shower heads and faucets;

(n) Burner for oil fired heating equipment in a residential building, which is a device which atomizes the fuel oil, mixes it with air and ignites the fuel-air mixture, and is an integral part of an oil fired furnace or boiler, including the combustion chamber;

(o) Individual meters to replace a master meter for gas, electricity and hot water in a commercial building, which are meters that measure the consumption of gas, electricity or centrally distributed hot water for individual users, instead of the total consumption which is measured by a master meter;

(p)(1) New oil burner in a commercial building or industrial plant, which is a device that meters, atomizes, ignites and mixes the oil with air for the combustion process of boiler; or

(2) New boiler controls in a commercial building or industrial plant, which are devices that sense the need for reducing or increasing the firing rate and change the combustion air and oil flow rate accordingly;

(q) Controls for lighting in a residential or commercial building or industrial plant which are manual or automatic cut off switches for lighting systems that allow cut off of all lighting or a portion of the lighting systems when lighting is not required;

(r) Automatic HVAC control system in a commercial building or industrial plant, which is a device which adjusts the supply of heating or cooling to meet space conditioning requirements;

(s) High efficiency electric motor or motor controls in a commercial building or industrial plant, which replace an existing motor or motor controls, resulting in not less than a specified increase in efficiency at a specified level of use, as determined by DOE; and

(t) Whole house ventilation fan in a residential building, which is a fan which removes air from the inside of a residential building to the outside.

(u) Air source heat pump, which is a system which is part of the central heating system and which has the capability of extracting heat from a body of air and transferring this heat to a body of liquid or to another body of air for space conditioning purposes;

(v) Water source heat pump, which is a system which is part of the central heating system and which has the capability of extracting heat from a body of water and transferring this heat to another body of liquid or to a body of air for space conditioning purposes.

PART 123—DISASTER—PHYSICAL DISASTER AND ECONOMIC INJURY LOANS

Sec.
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Subpart A—Conditions Applicable To All Loans Under This Part

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AUTHORITY: Sections 5(b)(6), 7 (b), (c), (f) of the Small Business Act, 15 U.S.C. §§ 634(b)(6), 636 (b), (c), (f); Pub. L. 100-590.

SOURCE: 49 FR 32311, Aug. 13, 1984, unless otherwise noted.

§ 123.1 Explanation of regulations.

(a) *Programs covered.* This part covers the disaster programs authorized under subsections 7(b), (c) and (f) of the Small Business Act, 15 U.S.C. 636(b) and (c) and (f), and is published pursuant to section 5(b)(6) of that Act, 15 U.S.C. 634(b)(6). Subpart A includes regulations common to all disaster programs. Subpart B includes regulations governing physical disaster loans, including loans to Major Sources of Employment. Subpart C includes regulations for loan programs designed to alleviate economic injury resulting from a physical disaster.

(b) *Emergency Changes.* Because of the emergency nature of the programs covered by this part, particularly the impossibility of foreseeing the occurrence or magnitude of disasters covered by the physical disaster loan programs in Subparts B and C, the regulation cannot anticipate all the contingencies, problems and needs which may arise in any given situation. SBA therefore advises that the regulations under this part must be and are subject to change without advance notice by publication of interim emergency regulations in the FEDERAL REGISTER. For example, the legislative limitation in the Omnibus Budget Reconciliation Act of 1983, Pub L. 98-270, of the combined physical disaster loan programs pursuant to paragraphs 7(b) (1) and (2) of the Small Business Act, 15 U.S.C. 636(b) (1) and (2), to $500 million for each of the fiscal years 1984, 1985 and 1986 may make it necessary to establish priorities which would favor applicants unable to obtain credit elsewhere over applicants to whom such credit is available. SBA will also make every effort to publicize changes of substance and procedure by whatever means practicable under the circumstances, including, but not limited to press releases to newspapers, radio and television stations, posting notices in public places, and by direct mailings (when possible) to affected concerns or persons.

(c) *Captions.* Captions are inserted for the reader's convenience only, and are not a part of these regulations.

(d) *Savings clause.* Financial assistance granted pursuant to prior regulations shall be governed by the related contractual terms and these prior regulations, unless a supervening statute requires otherwise. Nothing herein shall bar SBA enforcement action with respect to such financial assistance pursuant to contractual terms no longer in use and prior regulations no longer in effect. If any subpart, section or part of a section of these regulations should be adjudged invalid, only that part shall be invalid, and other parts shall not be affected thereby.

Subpart A—Conditions Applicable to All Loans Under This Part

§ 123.2 Introduction.

SBA is authorized to make or to guarantee loans as necessary or appropriate to victims of physical disaster or of economic injury caused by such disaster, by Federal action or by certain currency fluctuations. No economic injury disaster loans or Federal action or currency fluctuation economic injury loans are authorized for applicants able to obtain Credit Elsewhere (see definition in § 123.3). No person who has been convicted of a felony during and in connection with a riot or civil disorder shall be permitted, for a period of one year after the date of the conviction, to receive any benefit under any law of the United States providing relief for disaster victims (Pub. L. 90-448, section 1106(e); 5 U.S.C. 7313 note).

§ 123.3 Definitions.

Defined terms are capitalized through this part.

Adjusted Treasury Rate: The rate of interest determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaininig period to maturity comparable to the average maturities of loans made under section 7(b) of the Act, plus an additional charge of not to exceed one percent per annum as determined by the Administrator, and adjusted to the nearest one-eighth of one percent.

Commencement Date: The beginning of an event of a catastrophic or calamitous nature culminating in a Disaster or in economic injury. Such Commencement Date will be stated in the relevant Disaster declaration. (See also § 123.23(a).)

Credit Elsewhere: The availability, based on cash flow and disposable assets of the applicant, of sufficient credit from non-Federal sources on reasonable terms and conditions, taking into consideration prevailing rates and terms in the community in or near where the concern transacts business or the Homeowner resides, for similar purposes and periods of time.

Disaster: This term means a single sudden physical event of catastrophic nature (such as floods, riots, or civil disorders) which causes severe damage.

Disaster Area: (a) Except as provided in paragraph (b) below, an area which has been declared or designated as such by the Administrator of SBA, because of damage suffered as a result of a physical disaster, or by the Secretary of Agriculture in accordance with section 7(b)(2)(B) of the small Business Act (15 U.S.C. 636(b)(2)(B)), and the counties or other political subdivisions contiguous thereto.

(b) For major disasters declared by the President, the disaster area as determined by the Federal Emergency Management Agency constitutes the disaster area for purposes of SBA physical disaster assistance pursuant to Subpart B of this part. However, for purposes of Economic Injury Disaster Assistance in such disasters pursuant to Subpart C of this part, the disaster area also includes counties or other smaller political subdivisions contiguous thereto.

(c) For purposes of this definition, contiguous counties or other political subdivisions are those whose land areas abut the land area of the declared county without geographic separation other than by a minor body of water, not to exceed one mile between such counties.

Eligible Physical Loss: (a) A physical loss is necessary to establish loan eligibility under Subpart B. Such loss must be verified by SBA. Loss may be claimed only by the owner(s) (or the lessee(s) of the property if the lease requires the lessee to repair or rebuild) at the time of the disaster. Beneficial ownership as well as legal title (real or personal) may be considered in determining who suffered the loss, except that an equitable interest resulting from a mortgage or deed of trust will not make the holder of such interest eligible.

(b) Losses shall not be eligible:

(1) When a substantial (more than 50%) voluntary change of ownership occurred after the Disaster, and no contract of sale existed at the time of the disaster;

(2) When the replacement value is extraordinarily high, and is not easily verified, such as in the case of the value of antiques or hobby collections;

(3) To the extent that such loss is covered by insurance, grants, gifts to replace personal property (such as from the American Red Cross), or other compensation, if all or part of such compensation is available for repair or replacement. Such compensation must either be deducted from the claim, or assigned (paid) to SBA to reduce the outstanding balance of the loan, since Federal law prohibits duplication of benefits. (Borrowers must notify SBA of any amounts so received (OMB Approval No. 3245-0124) and must apply them to the outstanding loan balance in inverse order of maturity.) However, any financial assistance supplied by an Individual and Family Grant Program (Federal Emergency Management Agency) solely to meet an emergency need pending processing of an SBA loan may be repaid out of SBA loan proceeds, provided the funds were used for eligible SBA loan purposes; Condemnation awards shall be taken into consideration in determining the amount of the loss to the extent that such awards are available for replacement purposes;

(4) When the victim is deemed to have assumed the risk (for example, when property is located within a flowage easement, or in an area between a river and a levee without a business need therefor), or where flood insurance was previously required but not purchased, or was purchased and not maintained;

(5) If the property damaged constitutes a secondary home. The loss may be considered a business loss if the property is rented and if the property would not constitute a "residence" under the provisions of section 280A of the Internal Revenue Code;

(6) If the property is a vehicle of the type normally used for recreational

purposes, such as motor homes, aircraft, boats, etc. The loss may be included in a business applicant's loan if the applicant submits evidence of its use in the business; or

(7) If the property consists of cash or securities.

Homeowner: This term includes owner-occupants and lessees (renters) of residential property and also includes owners of personal property damaged by the Disaster.

Major Disaster: A disaster declared by the President which includes individual assistance. (See § 123.23(a).)

Major Source of Employment: (a) A concern which employed 10 percent or more of the entire work force of a geographically identifiable community, no larger than a county; or (b) a concern which employed 10 percent or more of the work force in an industry within the Disaster Area; or (c) any business within the Disaster Area which employed 1,000 or more employees. For disasters commencing on or after October 1, 1983, employees of concerns sharing common business premises shall be aggregated to determine "major source of employment" status for a non-profit applicant owning such premises.

Old Formula Rate: An interest rate not to exceed the average annual interest rate on all interest-bearing obligations of the United States then forming a part of the public debt as computed at the end of the fiscal year next preceding the date of the loan and adjusted to the nearest one-eighth of one percent plus one quarter of one percent.

[49 FR 32311, Aug. 13, 1984, as amended at 53 FR 52114, Dec. 27, 1988]

§ 123.4 Types of loans.

All financial assistance programs implemented in this part may be made as direct loans or in participation with a financial institution on an immediate or guaranteed basis as defined in §§ 122.7, 122.8, and 122.10 of this chapter, and SBA's share in an immediate participation or guaranteed loan may not exceed 90 percent of the balance of such loan outstanding at the time of disbursement.

§ 123.5 Financial institutions.

"Financial institutions" under this part are those which meet the criteria set forth in § 120.4 of this chapter.

§ 123.6 Fees and charges.

(a) *Closing fees.* No closing fee will be charged to a borrower with respect to any loan authorized in this part.

(b) *Service fees.* A financial institution, while it services an immediate participation loan, or a deferred participation loan (guaranty) where SBA has purchased its portion, may not charge the borrower a fee for such service.

(c) *Guaranty fee.* A guaranty fee will be charged by SBA to the lender with respect to all physical disaster and economic injury loans, as set forth for business loans in Part 120 of this chapter.

[49 FR 32311, Aug. 13, 1984, as amended at 51 FR 45300, Dec. 18, 1986]

§ 123.7 Where and how to apply.

A single copy of an application on a form provided by SBA (OMB Approval No. 3245-0017 or 3245-0018) may be filed with the district office branch office, disaster branch office or disaster area office, as appropriate. If a financial institution is participating, two copies of the application should be filed with such institution, and it will forward one copy to SBA. An applicant must complete a disaster loan application and submit such additional information as SBA may require. This information should be submitted to the nearest SBA disaster or other field office, preferably in person, within the time limit established in the applicable disaster declaration for the filing of applications. SBA will accept applications after such time limit only when SBA determines that the late filing resulted from substantial causes essentially beyond the control of the applicant.

§ 123.8 Obtaining loan funds.

(a) *Loan authorization.* When a loan has been approved, a loan authorization shall be issued, which will specify the conditions the borrower must meet.

(b) *Loan closing.* If the loan is a direct loan, the applicant shall be notified by SBA of the conditions and loan closing procedure. Otherwise, the participating lender will arrange the closing.

§ 123.9 Terms and amounts of loans.

(a) *Loan terms.* No loans made under this part, including renewals and extensions thereof, may be authorized for a term in excess of 30 years (see also § 123.13(b)), and no physical disaster loan made to a business able to obtain Credit Elsewhere (as defined in § 123.3) may be authorized for a term exceeding three years. Maturity will be established on each loan on the basis of the need of the borrower and borrower's ability to repay. Repayment ability according to the loan terms must be determined by SBA. Generally, equal monthly payments of principal and interest are required, except that borrowers with seasonal or fluctuating income may be accorded other payment terms. Payments will normally begin no later than 5 months from the date of the note. There is no penalty for prepayment of a direct loan.

(b) *Loan amounts.* Subject to the limitations and conditions imposed herein, loans under this part may be in amounts equal to 100 percent of the eligible loss: *Provided, however,* That if the applicant is a business, loans made as a result of disasters commencing between August 12, 1981, and October 1, 1982, are limited to 85 percent of Eligible Physical Loss as defined in § 123.3

§ 123.10 Interest rates.

Specific interest rates for physical disaster home loans are set forth in § 123.25(c), and the rate for physical disaster and economic injury business loans in §§ 123.26 and 123.41, respectively. The applicable rate of interest shall appear in the Disaster Declaration and shall be that rate which is in effect on the Commencement Date, as defined in § 123.3.

§ 123.11 Collateral.

The Small Business Act contains no specific requirements with respect to collateral as security for disaster or economic injury loans, nor has SBA established any rigid rules in regard to collateral. Generally, SBA will not decline a loan where the applicant does not have any fixed amount of collateral available to pledge if there is reasonable assurance of repayment. However, SBA may require applicants to pledge whatever collateral is available, and refusal to pledge such collateral may be the reasons for declining a loan.

§ 123.12 Reconsideration.

(a) *Where to apply.* Any applicant whose request for a loan is declined has the right to present information to overcome the reason(s) for decline and to request reconsideration (OMB Approval No. 3245-0122). However, any decline due to size can only be appealed in accordance with the procedures set forth in Part 121 of this chapter.

(b) *How to apply.* A request for reconsideration must be in writing and received by the office that declined the original request, within 6 months of the initial decline. After 6 months a new application is required.

(c) *Content of request.* The written request for reconsideration must contain all significant new information that the applicant relies on to overcome the reason(s) for decline. The request for reconsideration of a business loan must also be accompanied by current business financial statements.

(d) *Alternate reasons for decline.* The specification by SBA of any reason for denial of a loan request shall not constitute a waiver of SBA's right to deny such request for any other reason.

(e) *Further reconsideration.* An applicant whose request is declined on reconsideration has the right to request further reconsideration at the next higher office. The "next higher office" in the case of a branch office is the Area Processing Center. In the case of the Area Processing Center it is the Area Director's office.

(f) *Contents of request for further reconsideration.* All requests for reconsideration at the next higher office must be in writing and received by the office that processed and declined the prior reconsideration within 30 days of the decline action. The request must state that the applicant is seeking action at the next higher office and must contain the applicant's written justification for believing that the decline action should be reversed.

(g) *Final decision.* The decision of the Area Director is final unless: (1) The Area Director does not have authority to approve the requested loan, or (2) the Area Director refers the matter to the Deputy Associate Administrator for Disaster Assistance, or (3) the Deputy Associate Administrator for Disaster Assistance, upon a showing of special circumstances, requests the Area Director's office to forward the matter to the Central Office for final consideration. "Special Circumstances" as used herein may include, but are not limited to, policy reconsideration or reevaluation by elements of the Agency, alleged improper acts by SBA personnel or others, conflicting policy interpretations between two area offices or other such considerations.

§ 123.13 Loan administration, extension and liquidation.

(a) *Loan administration and liquidation.* Immediate participation and guaranteed loans closed by participating lenders will be administered by such lenders. All direct and immediate participation loans closed by SBA will be administered by SBA. Loans are administered and, if necessary, liquidated by sale of collateral and other legal recourse against borrower and guarantors according to the procedures and policies of § 120.204 of this chapter, as applicable.

(b) *Extensions.* Extensions of maturity or renewals of loans are limited to such periods of time as appear necessary to avoid the forced liquidation of loans. Generally, several short extensions will be granted rather than one lengthy one. Subject to § 123.9(a), extensions are granted when it appears that no other course of action will result in a greater or earlier recovery. The maturity of SBA's share of physical disaster repair and replacement loans to Homeowners and small concerns may be extended and payments of principal and interest may be suspended for periods not to exceed five years, if the related disaster declaration was made by the President or the Secretary of Agriculture, and SBA finds such action necessary to avoid severe financial hardship. Physical disaster and economic injury loans may also be extended or renewed for additional periods not to exceed ten years beyond the original maturity on request of the loan participant, to avoid a default, and upon agreement by the borrower to repay SBA for funds expended in connection therewith, if such extension or renewal will aid in the orderly liquidation of such loan, and if the original maturity of such loan did not exceed twenty years. For additional moratorium provisions, see Part 131 of this chapter.

(c) *Split interest rates.* On loans made under prior legislation at split interest rates, all repayments of principal on SBA's share shall be applied first to portions of loans carrying the lowest interest rate.

[49 FR 32311, Aug. 12, 1984, as amended at 51 FR 17004, May 8, 1986]

§ 123.14 Requirements applicable to flood-prone areas.

(a) *Community participation in flood insurance.* SBA has no authority to make loans in special hazard areas (flood, mudslide and flood-related erosion areas) defined by the Federal Insurance Administration unless the local community participates in the Federal flood insurance program, or less than a year has elapsed since the community was formally notified of the identification of a special hazard area within its boundaries. (See 44 CFR Part 64.)

(b) *Maintenance of flood insurance.* Eligible Applicants in such special hazard areas must purchase flood insurance in accordance with the requirements of Part 116, Subpart B of this chapter. Failure to maintain or obtain flood insurance as required by SBA will result in ineligibility for future SAB financial assistance. This requirement is in addition to other insurance requirements specified in the loan authorization.

(c) *Floodplains and Wetlands.* For special requirements in such areas, see Subpart D, Part 116 of this chapter.

(d) *Coastal barrier system.* No loans under this part shall be made to applicants within the coastal barrier system, as defined under Pub. L. 97-348, approved October 18, 1982 (96 Stat. 1653): *Provided, however,* That loans with respect to physical loss of personal property within such system may be made to applicants residing outside such system (transients).

§ 123.15 Civil rights requirements.

(a) *Civil rights regulations.* Loan recipients (other than Homeowners) are subject to the civil rights requirements of Parts 112, 113 and 117 of this chapter. The age of an applicant will not be considered in determining whether a loan should be made, or the amount of the loan, provided the applicant has the legal capacity to contract. The requirements of the Equal Credit Opportunity Act, 15 U.S.C. 1691 apply to all SBA loan recipients. See 12 CFR Part 220 and the Equal Credit Opportunity provision of SBA Form 1261 (OMB Approval No. 3245-0066).

(b) *Construction loans.* If loan proceeds in excess of $10,000 are to be used for the alteration, rehabilitation, construction, conversion, extension or repair of buildings or real property, applicants must sign and comply with "Applicant's Agreement of Compliance," SBA Form 601.

(The reporting and recordkeeping requirements described in SBA Form 601 are approved under OMB Numbers 1215-0072 and 3245-0076.)

[49 FR 32311, Aug. 13, 1984, as amended at 51 FR 45300, Dec. 18, 1986]

§ 123.16 Lead based paint prohibition.

Loan recipients are subject to the prohibition against the use of lead based paint set forth in Part 116, Subpart C of this chapter.

§ 123.17 Loans to agricultural enterprises.

"Agricultural enterprises" means those businesses engaged in the production of food and fiber, ranching and raising of livestock, aquaculture, and all other similar farming and agriculture-related industries. An agricultural enterprise is eligible for loan assistance under Subpart B (physical disaster) to repair or replace property other than residences and personal property only if the relevant disaster declaration application was submitted before October 1, 1985, and the applicant is not eligible for emergency loan assistance from Farmers Home Administration (FmHA) at a substantially similar interest rate (for example, because of (a) alien status; (b) being a corporation, partnership or cooperative not primarily engaged in farming; or (c) being owned by an individual who does not operate the farm). Applicants declined by FmHA for reasons other than ineligibility (*e.g.*, unfavorable credit determination, or lack of repayment ability), are not eligible for SBA disaster loan assistance. All agricultural enterprise applicants for such assistance must present a letter of referral from FmHA which specifies the particular reason for ineligibility, provided the loan request is $100,000 or less. See § 123.27 for computation of loss. Agricultural enterprises applying for assistance under Subpart C (economic injury disaster loans—see § 123.40) are eligible, without more, only if the relevant disaster declaration application was submitted before October 1, 1985.[4]

[51 FR 32198, Sept. 10, 1986]

§ 123.18 Books and records; SBA access.

(a) *Conditions applicable to all loans.* As a condition of the receipt of a loan under this part, the borrower shall maintain complete records of all transactions financed by the loan proceeds, including copies of all contracts and receipts, for a period of three years after the final loan disbursement and during the same period, shall make those records available upon request for inspection, audit and reproduction by SBA or other authorized Government personnel during normal business hours (OMB Approval No. 3245-0110).

(b) *Conditions applicable to loans to businesses including agricultural enterprises.* As a condition of the receipt of a loan under this part, the borrower shall maintain current and proper books of account for the most recent five years in a manner satisfactory to

SBA and any financial institution participating in the loan until three years from the date of maturity, including any extensions made pursuant to § 123.13(b), or from the date when the loan is paid in full, whichever occurs first. This shall include borrower's financial and operating statements, insurance policies, tax returns and related filings, records of earnings distributed and dividends paid, and records of compensation to officers, directors, holder of 10 percent or more of borrower's capital stock, partners and proprietors. The borrower shall make available to SBA or other authorized Government personnel upon request all such books and records for inspection, audit and reproduction during normal business hours. The borrower shall also permit SBA and any participating financial institution to inspect and appraise borrower's assets (OMB Approval No. 3245-0110).

Subpart B—Physical Disaster Loans

§ 123.20 Introduction.

This subpart contains the regulations specifically dealing with loans made to repair or replace property damaged by a physical disaster. (For regulations applicable to all loans under this part, see Subpart A.) This subpart sets forth the procedures by which a Disaster Area is declared, and assistance made available by SBA to Disaster victims. Conditions affecting all loans are set forth first, then special conditions for home, business, agricultural loans, loan to Major Sources of Employment, and loans to privately owned colleges and universities.

§ 123.21 Physical disaster loan authority.

(a) *Loans to victims.* SBA is authorized to make, or to participate (on an immediate or guaranty basis) in, loans to victims of floods, riots, civil disorders or other catastrophes, to repair, rehabilitate or to replace property physically damaged or destroyed in the disaster area when a physical disaster declaration has been issued.

(b) *Major employer.* For loans to any Major Source of Employment, see § 123.28.

(c) *Flood-prone areas.* For limitations on the foregoing authority, see § 123.14 and Subpart B, Part 116 of this chapter.

(d) *Eligible Applicants.* A Homeowner, business of any size, nonprofit corporation, religious or eleemosynary institution, or other private organization (including a privately owned college or university) which has suffered physical damage as a result of its location in a Disaster Area is eligible to apply for assistance.

(e) *Loan Purposes.* The purpose of these loans and the only permissible use therefor is to restore or replace a victim's primary home (including a mobile home used as the primary residence of the applicant) and personal or business property as nearly as possible to predisaster condition. A loan to a Homeowner may be used to repair or replace damaged or lost furniture and other belongings, or to repay interim financing obtained for purposes of repair and placement, subject to the definition of Eligible Physical Loss of this section. Funds may be used by a business concern to repair or replace destroyed or damaged business facilities, inventory, machinery or equipment, or to repay interim financing obtained for such purpose. If the disaster victim elects to construct a new home or new business facilities on a different site, the loan may be used for such purpose. Any such loan shall not exceed the estimated cost of restoring or replacing the damaged or destroyed property. SBA's lien position shall be at least as strong as it would have been if the victim had restored the property at the original location, and loans to relocate a 1 to 4 family residential structure will be subject to the Real Estate Settlement Procedures Act of 1974.

§ 123.22 Declaration criteria.

(a) *Minimum damage requirements.* A physical disaster declaration by the Administrator of SBA is based solely on physical damage to buildings, machinery, equipment, inventory, homes and other property, of an extent that warrants a declaration. The Administrator of SBA has no legal authority to make any physical disaster declaration based solely on economic injury. The minimum amount of damage that

SBA usually requires before making a physical disaster declaration is:

(1) In any county or other political subdivision of a State, at least 25 homes or 25 businesses, or a combination of at least 25 homes, businesses, or other eligible institutions have each sustained uninsured losses of forty (40) percent or more of their estimated fair replacement value or predisaster fair market value, whichever is lower; or

(2) At least three businesses have sustained uninsured losses of forty (40) percent or more of their estimated fair replacement value or predisaster fair market value, whichever is lower, and, as a direct result of the physical damage, 25 percent or more of the work force in the community would be unemployed for at least 90 days.

(b) *Continuing damage.* All damage suffered in the Disaster Area subsequent to the Commencement Date as a result of the event for which the declaration was made (for example, continued flooding or snowfall) will be considered eligible damage, deemed to have occurred on the Commencement Date.

§ 123.23 Declaration procedures.

(a) *Major Disaster.* When, pursuant to the Disaster Relief Act of 1974, 42 U.S.C. 5141(b), the President declares a Major Disaster which includes the provision of individual assistance, SBA shall issue its disaster declaration in accordance therewith except that if SBA has previously issued a disaster declaration with an earlier Commencement Date, SBA will continue to use its established Commencement Date.

(b) *Small Business Administration Disaster Declaration.* A physical disaster declaration by SBA must be requested by the Governor of the State in which the Disaster occurred (OMB Approval No. 3245-0121). Such request must be made to SBA's Regional Office serving the region wherein the Disaster occurred and must within be sixty (60) days of the date of a Disaster. The Administrator may, in case of undue hardship, extend the filing time for such request. The appropriate SBA Regional Office will forward the request to the appropriate Disaster Area Office which will evaluate and forward the request with a recommendation to SBA's Central Office. The Administrator will take final action, and if the request is approved, SBA will publish a notice of Disaster declaration in the FEDERAL REGISTER. An economic injury Declaration always accompanies a Major Disaster declaration and an SBA Disaster declaration.

(c) *Certification by Governor.* When Disaster damage is insufficient for a Major Disaster declaration, an SBA Disaster declaration or a designation by the Secretary of Agriculture, the Governor of the State wherein a Disaster (see § 123.3) occurred may certify to SBA that small business concerns in the State have suffered substantial economic injury (see § 123.41(a)) as a result of the Disaster to such a degree as to warrant Federal involvement in the form of subsidized loans; generally, this requirement will be satisfied if at least five (5) small business concerns in the State have suffered such substantial economic injury. Such certification shall state that such small business concerns are in need of financial assistance which is not otherwise available on reasonable terms in the Disaster Area. The Governor's certification shall further specify the counties or other smaller political subdivisions in which the Disaster occurred. Such certification with supporting documentation shall be sent to the Regional Office serving the region wherein the Disaster occurred within 120 days of the incident period of the Disaster. The Regional Office will forward the request to the appropriate Disaster Area Office where the request will be evaluated and forwarded with a recommendation to SBA's Central Office. The Administrator will take final action and, if the request is approved, publish a notice of Disaster designation in the FEDERAL REGISTER. The Administrator may in the case of undue hardship accept such request after 120 days have expired.

(d) *Designations by the Secretary of Agriculture.* SBA may provide economic injury assistance for a natural disaster, determined by the Secretary of Agriculture pursuant to the Consolidated Farmers Home Administration Act of 1961 (Consolidated Farm and

Rural Development Act), (7 U.S.C. 1961). Under these designations SBA makes economic injury assistance available to eligible small businesses (see § 123.41 of this part).

(Information collection requirements in paragraph (c) were approved by the Office of Management and Budget under control number 3245-0121.)

[49 FR 32311, Aug. 13, 1984, as amended at 50 FR 4615 Jan. 31, 1985]

§ 123.24 Conditions affecting all physical disaster loans.

(a) *Amount.* The amount of a loan is limited to the Eligible Physical Loss sustained and funds permitted under paragraphs (f), (g), (h) and (i) of this section. In no event may the total amount of SBA's share outstanding and committed to a borrower, resulting from a single Disaster, exceed $500,000, except as permitted in § 123.28 (Major employer) and limited by § 123.25 (Homeowners). SBA's share of an immediate participation in or guaranty of a loan under this Part may not exceed 90 percent of the sum of the unpaid principal and accrued interest.

(b) *Repayment ability.* Loans are further limited by SBA's determination of the applicant's ability to repay. If this amount is not sufficient to restore the damaged property, the applicant must show that sufficient funds are available from other sources to complete restoration or that a reduced facility (within the applicant's ability to repay) is feasible and appropriate.

(c) *Receipts.* Each borrower shall retain evidence as to the use of loan proceeds for a period of three years from the date of last disbursement, and make such evidence available to SBA or other authorized Government personnel upon demand (see § 123.18(a)).

(d) *Use of proceeds.* Each borrower must use the loan proceeds for the loan purposes (see § 123.21(e)) set forth in the authorization. Any loan recipient who wrongfully applies loan proceeds shall be civilly liable to SBA in an amount equal to one and one-half times the original amount of the loan (Pub. L. 92-385, approved August 16, 1972; 86 Stat. 554).

(e) *Personal funds.* SBA may authorize funds for the repayment of personal funds used solely to alleviate the Eligible Physical Loss.

(f) *Refinancing.* A part or all of existing loans secured by recorded liens on real property damaged by the disaster or on business machinery and equipment damaged by the disaster may be refinanced with a portion of disaster loan proceeds, subject to (in the case of Homeowners) § 123.25(a)(4): *Provided,* That (1) the property suffered uninsured damage of 40 percent or more of the market value at the time of the Disaster; (2) the amount refinanced may not exceed the Eligible Physical Loss; (3) the victim is unable to obtain Credit Elsewhere; and (4) the damaged property is to be rehabilitated or replaced (including by relocation).

(g) *Relocation.* (1) If the disaster victim voluntarily elects to construct or buy another home or business facility in a new location, the loan may be used for such purpose, subject to § 123.25(a). However, any such loan shall not exceed the estimated cost of restoring or replacing the damaged or destroyed property, plus amounts eligible for refinancing of existing liens or mortgages on the damaged property. SBA's security interest in the new property shall at least equal such interest SBA would have had at the original location. No relocation loans shall be made to victims of disasters within the coastal barrier system, as defined under Pub. L. 97-348, approved October 18, 1982 (96 Stat. 1653), see § 123.14(d).

(2) Where involuntary relocation becomes necessary because applicable law prevents rehabilitation of real property, damage to such property shall be deemed to amount to total loss. In these cases the loan shall be in such greater or lesser amount as SBA deems sufficient to replace the borrower's real property at the new location, and include funds to cover losses of personal property, and eligible refinancing, subject to § 123.25(a) and Pub. L. 97-348 cited in paragraph (g)(1) above.

(h) *Building codes.* Repair to and replacement of property must conform to local building codes.

(i) *Minimum standards of safety and decency.* Upgrading with loan proceeds is not allowed except as necessary to meet minimum standards of safety and decency or to meet building codes.

§ 123.25 Special conditions—Home loans.

(a) *Limits.* SBA's share of loans approved on or after October 1, 1983, to a Homeowner (including all dependents) is limited for any one disaster commencing on or after October 1, 1982, to the following:

(1) $20,000 for repair or replacement of household and personal effects;

(2) $100,000 for repair or replacement of a primary residence, including repair or replacement of landscaping and/or recreational facilities not to exceed $2,500;

(3) Eligible refinancing pursuant to § 123.24(f) not to exceed the lesser of $100,000 or the physical damage to the real property which is to be repaired.

(4) $220,000 for the total loan within the limitations specified in paragraphs (a)(1) through (3) of this section.

(b) *Additional limits.* Persons living in a damaged home who are not dependents of the occupant may apply for loans to repair or replace personal property to the extent of their loss, but such loans may not exceed $20,000.

(c) *Interest.* Loans made to Homeowners able to secure Credit Elsewhere will bear interest at the Adjusted Treasury Rate but not to exceed 8% per annum. Loans made to Homeowners unable to obtain Credit Elsewhere will bear interest at one half the Adjusted Treasury Rate but not to exceed 4% per annum.

(d) *Supplements.* SBA loans may be supplemented (but not duplicated) with assistance from private relief organizations such as the American Red Cross, the Salvation Army, the Mennonite Disaster Service and other relief or disaster assistance organizations.

(e) *State grants.* Where a State has instituted a grant program under the Disaster Relief Act of 1974 for victims of Major Disasters, those victims who have suffered only personal property damage and who lack repayment ability shall be immediately referred to appropriate State representatives, in order to expedite assistance to victims. SBA shall presume that such victims who rely for over half of their support on unemployment, social security, welfare, survivor or other similar program, lack repayment ability. Disaster victims, who desire to do so, however, may file an application (OMB Approval No. 3245-0017 or 3245-0018) with SBA in order to obtain a decision on their eligibility for financial assistance from SBA.

(f) *Liens.* Homeowners may not refinance liens on personal property nor may they use any loan proceeds to pay indebtedness on personal property, except as permitted under § 123.24(e). Disaster loan liens may be transferred from condemned properties to other properties which have been acquired with the proceeds of condemnation.

(g) *RESPA.* Owner occupied 1-to-4 family residences are subject to the provisions of the Real Estate Settlement Procedures Act of 1974, as amended.

(h) *Rescission.* Any recipient of an approved disaster home loan for which security is required shall be entitled to rescind said loan pursuant to the Consumer Credit Protection Act, 15 U.S.C. 1601, and Regulation Z of the Federal Reserve Board, 12 CFR Part 226. Any note and mortgage, lien or security agreement which has been executed will be canceled upon return of all funds which have been disbursed.

[49 FR 32311, Aug. 13, 1984, as amended at 51 FR 45300, Dec. 18, 1986; 51 FR 47209, Dec. 31, 1986]

§ 123.26 Special conditions—Business loans.

(a) *Limits.* Disaster business loans (for the aggregate of physical disaster and economic injury loans) are limited by statute to a ceiling of $500,000 per applicant for SBA's share in any one disaster for direct, immediate participation, or the guaranteed portion of guaranteed loans, unless the Administration finds that an applicant is a Major Source of Employment (as defined in § 123.3) in the Disaster Area, and the Administration waives the $500,000 limitation. These limitations apply to a concern together with its affiliates as that term is defined in

§ 121.3-2 of this chapter. Refinancing of liens on personal property employed in the business, such as machinery and equipment, is permissible if such property was substantially damaged (see § 123.24(f)). Funds allocated for repair or replacement of landscaping (including recreational facilities) may not exceed $2,500 unless such landscaping fulfilled a functional need or contributed to the generation of business.

(b) *Interest.* Loans made to business concerns able to obtain credit elsewhere will bear interest at a rate prescribed by the Administration (not to exceed the rate prevailing in the private market for similar loans or the maximum interest rate for loans guaranteed under section 7(a) of the Small Business Act) but not exceeding 8% per annum. Loans made to business concerns unable to obtain credit elsewhere will bear interest at a rate not to exceed 4% per annum.

(c) *Maximum Term of Loans.* See § 123.9(a).

[49 FR 32311, Aug. 13, 1984, as amended at 51 FR 45300, Dec. 18, 1986]

§ 123.27 Additional conditions—Farm loans.

(a) *Computation of Loss.* To determine the eligible loan amount for full or partial physical crop losses for applicants (OMB Approval No. 3245-0128) determined by SBA to be eligible for assistance under this part, the Eligible Physical Loss is an amount which is determined by multiplying the number of acres planted, times the percentage of loss, times per acre cash outlay (production cost) and deducting therefrom recoveries such as crop insurance, USDA grants or other recoveries. In each case, normal yield for each crop must be established to determine the extent of partial crop losses. Normal yield is defined as the yield determined by the Agricultural Stabilization and Conservation Services (ASCS) for program crops, and by the Statistical Reporting Service (SRS) county or state averages for those non-program crops for which such averages are available. County Emergency Board (CEB) averages (as appropriate) may be used for those non-program crops for which SRS does not maintain averages. Alternate data sources may be approved by SBA if a normal yield is not available from either ASCS, SRS or an appropriate CEB. Cash outlay (production costs) is defined as the actual out-of-pocket cash investment to the time of the disaster required to plant and/or harvest a particular crop, and such costs as are required to properly maintain such crop.

(b) *Partial crop loss.* Applications based on partial crop losses will not be approved until after the normal harvest season for that crop or crops in order that the actual loss may be ascertained.

(c) *Minimum loss.* Applicants must meet minimum loss criteria substantially similar to criteria applied by Farmers Home Administration for Disasters commencing before October 1, 1983.

§ 123.28 Loans to Major Sources of Employment.

Loans to Major Sources of Employment (as defined in § 123.3) shall be made under the authority of the Small Business Act and the provisions of this Part. In such cases, the Administration, in its discretion, may waive the $500,000 limitation of § 123.26(a), if the applicant has used all funds from its own resources and all available Credit Elsewhere (see § 123.3) to alleviate the physical damage and/or economic injury sustained plus eligible refinancing.

§ 123.29 Loans to privately owned colleges and non-profit organizations.

(a) *Colleges.* SBA is authorized to make physical disaster loans in the case of loss or damage as a result of a declared Disaster (see § 123.23), to the extent that such loss or damage is not compensated by insurance or otherwise, to a privately owned college or university without regard to the availability of Credit Elsewhere, at the Old Formula Rate, and may, in the case of a Major Disaster, waive interest payment on such loans for the first three years of the term of such loans. See also § 123.13.

(b) *Other non-profit organizations.* SBA is also authorized to make physical disaster loans to eleemosynary and other non-profit organizations in the case of loss or damage as a result of a declared Disaster, to the extent that such loss or damage is not compensated by insurance or otherwise without regard to availability of Credit Elsewhere, at the Old Formula Rate.

Subpart C—Economic Injury Disaster Loans

§ 123.40 Introduction.

Loans to which this subpart applies are available only to small business concerns and small agricultural cooperatives situated in a Disaster Area which have suffered or are likely to suffer substantial economic injury (as defined in § 123.41(a)) as a result of that specific Disaster (see § 123.23). Agricultural enterprises meeting the requirements of § 123.17 of this Part are eligible only if the relevant disaster declaration application was submitted before October 1, 1985. For description of an eligible "small agricultural cooperative" see § 123.41(b)(3). For definition of capitalized terms, see § 123.3.

[51 FR 32198, Sept. 10, 1986]

§ 123.41 General provisions.

(a) *Substantial Economic Injury* for purposes of this subpart means a change in the financial condition of a small business concern or small agricultural cooperative attributable to the effect of a specific declared Disaster, as defined (see § 123.3), resulting in the inability of such small concern to meet its obligations as they mature, and to pay its ordinary and necessary operating expenses. If a small concern was established or has undergone a substantial change of ownership (more than 50%) after an impending economic injury became apparent and no contract of sale existed at that time the owner shall be deemed to have assumed that risk, and not to have incurred economic injury. Loss of anticipated profits or a drop in sales which is not disaster-related, is not considered an economic injury for purposes of this subpart. Evidence of loss or injury and of the cause thereof, satisfactory to SBA, must be provided by the applicant (OMB Approval No. 3245-0017).

(b) *Eligible Applicants.* (1) Loans under this subpart are authorized only for small business concerns and small agricultural cooperatives (see paragraph (b)(3) of this section), located within the Disaster Area and meeting the size standards of Part 121 of this chapter as of the time (stated in the relevant declaration or designation) when the economic injury commenced, and which have suffered or are likely to suffer substantial economic injury directly resulting from Disaster and are unable to obtain Credit Elsewhere (as defined in § 123.3).

(2) Small concerns regardless of their business activity are eligible to apply for these loans, except for multilevel sales distribution plans of the "pyramid" type (see § 120.2(d)(12) of this chapter), media of any description (see § 120.2(d)(4)), gambling (see § 120.2(d)(5)), financing (see § 120.2(d)(6)), speculative ventures (e.g., mineral exploration) (see § 120.2(d)(2)), rental property (see § 120.2(d)(7)), and illegal activities (see § 120.2(d)(9)).

(3) Consumer and marketing cooperatives are ineligible. Other cooperatives are eligible only if small and each of the owners would itself qualify as small under Part 121 of this chapter. However, small agricultural cooperatives acting pursuant to the provisions of the Agricultural Marketing Act (12 U.S.C. 1141), and meeting the size standards of Part 121 of this chapter as of the time of the Disaster with respect to which a declaration or designation under section 7(b)(2) of the Act has been issued after September 1, 1982 are eligible: *Provided, however,* That for Disasters commencing before October 12, 1984, all the members of the board of directors or other governing body shall also qualify as small under Part 121 of this chapter.

(4) Applicants determined by SBA as able to obtain Credit Elsewhere are not eligible for loans under this subpart.

(c) *Availability.* Loans under this subpart are available for eligible small businesses and small agricultural cooperatives located in an area which has been:

(1) Determined a Major Disaster area by the President (42 U.S.C. 1855 *et seq.*);

(2) Determined a natural Disaster Area by the Secretary of Agriculture (7 U.S.C. 1961);

(3) Declared a Disaster Area by SBA; or

(4) Designated an area of economic injury by SBA pursuant to a Governor's certification, see § 123.23(c).

(d) *Interest.* (1) Loans to small business concerns shall bear interest at a rate not to exceed 4 percent.

(2) Loans to small agricultural cooperatives, as defined in paragraph (b)(3) above, made as a result of any disaster with respect to which a declaration or certification has been issued or made after September 1, 1982 under section 7(b)(2) of the Act, shall bear interest at the Old Treasury Rate.

(e) *Loan amount.* Loans under this subpart may be approved in addition to any disaster loan under Subpart B: *Provided, however,* That the aggregate amount of these loans to a single applicant, together with its affiliates as defined in § 121.3-2 of this chapter, in a single disaster shall not exceed $500,000, unless the applicant qualifies as a Major Source of Employment under § 123.28 of this part.

(f) *Term of Loan.* See § 123.9(a).

(g) *Use of Proceeds.* (1) Proceeds of loans under this subpart may be used for the alleviation of the specific economic injury, and for working capital necessary to carry the concern until resumption of normal operations, but not to exceed that which the business could provide had the injury not occurred, and for upgrading, if required to meet building code requirements.

(2) Proceeds of loans under this subpart shall not be used for the payment of dividends or other disbursements to owners, partners, officers or stockholders unless they constitute reasonable remuneration and are directly related to their performance of services; nor for refunding of existing indebtedness incurred prior to or not as a result of the event which gave rise to the issuance of the declaration or designation or to reduce loans provided, guaranteed or insured by another Federal agency or a small business investment company licensed under the Small Business Investment Act. No part of the proceeds of any loan under this subpart shall be used, directly or indirectly, to pay any obligations resulting from a Federal, state or local tax penalty as a result of negligence or fraud, or non-tax criminal fine or any civil fine or penalty for non-compliance with a law, regulation or order of a Federal, state, regional, or local agency or similar matter.

(3) Each borrower shall use the loan proceeds for the purposes set forth in the loan authorization. Any loan recipient who wrongfully applies loan proceeds shall be civilly liable to SBA in an amount equal to one and one-half times the original amount of the loan (Pub. L. 92-385, approved August 16, 1972; 86 Stat. 554).

(4) Applicants must use personal and business assets to the greatest extent possible, without incurring undue personal hardship, before disbursement of funds under this subpart.

(h) *Other requirements.* For application requirements see § 123.18; for terms of loans, see § 123.9(a); for types of loans, see § 123.4; for services fees, see § 123.6 of this part.

[49 FR 32311, Aug. 13, 1984, as amended at 50 FR 4615, Jan. 31, 1985; 51 FR 45300, Dec. 18, 1986]

PART 124—MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT

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AUTHORITY: 15 U.S.C. 637(a).

SOURCE: 51 FR 36141, Oct. 8, 1986, unless otherwise noted.

§ 124.1 The Section 8(a) and 7(j) programs.

(a) *General.* (1) These regulations implement sections 8(a) and 7(j) of the Small Business Act (15 U.S.C. 637(a) and 636 (j)) which establish the Minority Small Business and Capital Ownership Development Program (program). These regulations apply to all section 8(a) concerns participating in the program as of the effective date of these regulations and all concerns applying for admission to the program subsequent to that date.

(2) Section 8(a) authorizes SBA to enter into all types of contracts (including, but not limited to, supply, services, construction, research and development) with other Government departments and agencies, and to negotiate subcontracts for the performance thereof with small business concerns owned and controlled by socially and economically disadvantaged individual(s).

(3) Section 7(j) authorizes SBA to provide financial assistance to public or private organizations to pay all or part of the cost of projects designed to provide technical or management assistance to individuals or small business concerns eligible for assistance under sections 7(a)(11), 7(j)(10), and 8(a) of the Small Business Act.

(b) *Purposes.* (1) It is the purpose of the Section 8(a) program to:

(i) Foster business ownership by individuals who are both socially and economically disadvantaged;

(ii) Promote the competitive viability of such firms by providing such available contract, financial, technical, and management assistance as may be necessary; and

(iii) Clarify and expand the program for the procurement by the United States of articles, equipment, supplies, services, materials, and construction work from small business concerns owned by socially and economically disadvantaged individuals.

(2) It is the purpose of the Section 7(j) program to:

(i) Foster business ownership by individuals in groups that own and control little productive capital; and

(ii) Promote the competitive viability of such firms by creating a small business and capital ownership development program to provide such available financial, technical, and management assistance as may be necessary.

§ 124.2 Program management.

The Associate Administrator for Minority Small Business and Capital Ownership Development (AA/MSB-COD) is responsible for the formulation and execution of the policies and programs under sections 7(j) and 8(a) of the Small Business Act under the supervision of, and responsible to the Administrator of SBA.

§ 124.3 Violations.

Willful violation by an applicant for admission to the section 8(a) program or an applicant for participation in the section 7(j) program of any of SBA's regulations governing its other programs may result in the applicant's denial of admission to the program. Any such violation will be considered by the AA/MSB-COD in making a determination on the admission of an applicant to the program, and such consideration will include the nature and severity of any such violation.

§ 124.100 Definitions and applicability of these regulations.

(a) "Business plan" means the business plan documents as submitted by the applicant section 8(a) concern and approved by SBA which include the objectives, goals, and business projections of a section 8(a) concern, and all written amendments or modifications which have also been approved by SBA.

(b) "Certification of SBA's competency" means a certification by SBA that it is competent to perform the requirement as stated in the contract, and is based upon an assessment of a section 8(a) concern's competency to perform. The assessment does not require a special investigation or the issuance of a Certificate of Competency (COC) as provided for elsewhere in these regulations under the authority of section 8(b)(7) (A), (B), and (C) of the Small Business Act.

(c) "Commitment" means the commitment made by a procuring activity to SBA that the procuring activity will negotiate to place a contract with SBA or subcontract with a section 8(a) concern, provided there is no material change in requirements, availability of funds, or other pertinent factors. A commitment does not mean that an award of a particular contract to SBA and a section 8(a) concern will or must be made.

(d) "Local buy item" means a supply or service purchased to meet the specific needs of one user. Examples include the purchase of nonprofessional services, such as custodial or trash hauling, and construction work.

(e) "Manufacturer" means a concern which owns, operates, or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment described by the business plan. In order to qualify as a manufacturer, a concern must be able to show (1) that it is an established manufacturer of particular goods or goods of general character which may be sought by the Government, or (2) if it is newly entering into such manufacturing activity, that it has made all necessary prior arrangements for space, equipment, and personnel to perform manufacturing operations. A new firm which has made such definite commitments in order to enter a manufacturing business which will later qualify it, shall not be barred from 8(a) approval because it has not yet done any manufacturing; however, this interpretation is not intended to qualify a firm whose arrangements to use space, equipment, or personnel are contingent upon 8(a) approval. This definition is based upon the Walsh-Healy Public Contracts Act, 41 U.S.C. 35-45.

(f) "National buy item" means an item or service purchased to meet the needs of a system where supply control, inventory management, and procurement responsibility have been assigned to a central procuring activity to support the needs of two or more users of the item. Examples include military clothing purchased by the Defense Personnel Support Center of the Department of Defense, paint or hand tools purchased by the Federal Supply Service of the General Services Administration, medical supplies purchased by the Veterans Administration, or studies, evaluations, consulting services or similar services purchased by the headquarters office of a department or agency.

(g) "Negative control," as used in this part is defined in § 121.3(a)(i), formerly § 121.3-2(a)(i), of these regulations which is entitled "Nature of Control."

(h) "Open requirement" means a requirement submitted to SBA by a procuring activity for possible 8(a) award without a particular 8(a) concern identified as a candidate for the award. Open requirements can be for local buy items or national buy items.

(i) "Primary industry classification" means the four digit Standard Industrial Classification (SIC) Code designation which, for an on-going applicant concern, best describes the industry representing the largest proportion of its business revenues for the previous year or, in the case of a start-up applicant concern, that SIC Code designation which best describes the industry in which it intends to do the most business.

(j) "Regular dealer" means a person who owns, operates, or maintains a store, warehouse, or other establishment in which materials, supplies, articles, or equipment of the general character described in the business plan are bought for the account of such person, kept in stock and sold to the public in the usual course of business. In order to qualify as a regular dealer, the concern must be able to show:

(1) That he has an establishment or leased or assigned space in which he regularly maintains a stock of goods in which he claims to be a dealer; if the space is in a public warehouse, it must be maintained on a continuing, and not on a demand basis;

(2) That the stock maintained is a true inventory from which sales are made; the requirement is not satisfied by a stock of sample or display goods, or by a stock consisting of surplus goods remaining from prior orders, or by a stock unrelated to the supplies which are the subject of the business plan, or by a stock maintained primarily for the purpose of token compliance with the Act from which few, if any, sales are made;

(3) That the goods stocked are of the same general character as the goods in which he claimed to be a dealer; to be of the same general character the items to be supplied must be either identical with those in stock or be goods for which dealers in the same line of business would be an obvious source;

(4) That sales are made regularly from stock on a recurring basis; they cannot be only occasional and constitute an exception to the usual operations of the business; the proportion of sales from stock that will satisfy the requirements will depend upon the character of the business;

(5) That sales are made regularly in the usual course of business to the public, i.e., to purchasers other than Federal, State, or local government agencies; this requirement is not satisfied if the applicant concern merely seeks to sell to the public but has not yet made such sales; if government agencies are the sole purchasers, the applicant concern will not qualify as a regular dealer; the number and amount of sales which must be made to the public will necessarily vary with the amount of total sales and the nature of the business; and

(6) That his business is an established and going concern; it is not sufficient to show that arrangements have been made to set up such a business.

This definition is based upon the Walsh-Healy Public Contracts Act.

(k) "Requirement support" means contract opportunities from Federal procuring agencies to acquire articles, equipment, supplies, services, materials or construction work which a section 8(a) business concern could perform.

(l) "Self-marketing" of an item occurs when a section 8(a) marketing firm identifies a requirement that has not been committed to the section 8(a) program and through its marketing efforts causes the procuring activity to offer that specific requirement to the 8(a) program on its behalf.

(m) *Applicability to participating section 8(a) concerns.* Business plans for all participating section 8(a) concerns shall reflect Standard Industrial Classification Code designations consistent with the requirements of § 124.207 of these regulations. Within 120 calendar days of publication of this final rule, the appropriate SBA field office will review the business plan and related documents of each participating section 8(a) concern and within the same 120-day period will notify each concern by certified mail to its address of record of the SIC Code designations for which it has been approved to receive section 8(a) program contract awards. Within 30 calendar days from the date on which the notice is mailed, a participating concern may request in writing that SBA make a correction in the approved SIC Code designations in its presently approved business plan in order to conform the approved business plan to these regulations. Written approval or disapproval of any such request will be provided by SBA within 60 calendar days of the receipt of the request. Any correction of one or more SIC Code designations will be effective only when SBA gives written approval of such request. After the process is completed as to all concerns participating in the section 8(a) program on the effective date of these regulations, any subsequent changes in SIC Code designations appearing in their business plans must be accomplished pursuant to § 124.207(b).

§ 124.101 The section 8(a) program: General eligibility.

(a) In order to be eligible to participate in the section 8(a) program, an individual or an applicant concern must meet all of the eligibility criteria set forth in § 124.102 through § 124.110 hereunder. All determinations made pursuant to §§ 124.102, 124.103, 124.104, 124.105, 124.106, and 124.107 shall be in writing, setting forth the grounds and relevant facts upon which the determination is based, by the AA/MSB-COD, whose decision shall be final.

(b) It is the intent of the Small Business Administration to limit participation in the section 8(a) program to eligible individuals and concerns, and to process applications for participation in a fair and consistent manner. Toward that end, the Small Business Administration invites the participation of the public in preventing fraud and assuring the integrity of the section 8(a) program. The AA/MSB-COD shall review any determination that an individual or applicant concern is eligible to participate in the section 8(a) program whenever a member of the public submits credible evidence that such determination was based on fraudulent information, or that SBA did not follow the requirements of these regulations in rendering the determination. The AA/MSB-COD shall determine whether the facts developed during any such review warrant further action; provided that any review of potential misconduct by SBA shall be concluded with a detailed report of the findings to the member of the public whose information gave rise to the review.

§ 124.102 Small business concern.

(a) In order to be eligible to participate in the section 8(a) program, an applicant concern must qualify as a small business concern as defined in § 124.4 of the SBA Rules and Regulations (13 CFR 121.4). The particular size standard to be applied will be based on the primary industry classification of the applicant concern.

(b) In order to continue to participate in the section 8(a) program once a concern is admitted to the program, the concern must certify to SBA that it is a small business pursuant to the provisions of § 121.4 for the purpose of performing each individual contract which it is awarded. SBA, in turn, will verify such certifications.

(c) Once admitted to the section 8(a) program, a concern will only be permitted to perform 8(a) contracts which are classified according to the standard industrial classification code numbers which appear in its business plan as established pursuant to § 124.207 of these regulations. A participating section 8(a) business concern is free to pursue *any non-section 8(a) contract* regardless of its Standard Industrial Classification Code number which it is capable and competent to perform.

§ 124.103 Ownership.

In order to be eligible to participate in the section 8(a) program, an applicant concern must be one which is at least 51 percent owned by an individual(s) who is a citizen of the United States (specifically excluding resident alien(s)) and who is determined to be socially and economically disadvantaged by SBA.

(a) In the case of an applicant concern which is a partnership, 51 percent of the partnership interest must be owned by an individual(s) determined to be socially and economically disadvantaged.

(b) In the case of an applicant concern which is a corporation, 51 percent of all classes of voting stock must be owned by an individual(s) determined to be socially and economically disadvantaged.

(c) Part ownership in an applicant concern by nondisadvantaged individual(s) is permitted and may be necessary to insure adequate capital and management for the concern's development. However, any property, equipment, supplies, services and/or financial assistance other than personal services which are sold, rented or donated to the 8(a) concern by such nondisadvantaged individual(s) must be reported to SBA on an annual basis. Such nondisadvantaged individual(s), their spouses or immediate family members may not:

(1) Be former employers of the disadvantaged owner(s) of the applicant concern without prior approval of SBA;

(2) Be affiliated with another business in the same or similar type of business as the applicant concern;

(3) Hold ownership interest in any other 8(a) concern in an amount deemed excessive by SBA;

(4) Exercise negative control over the applicant concern as defined in 13 CFR 121.3(a)(i) (formerly 13 CFR 121.3-2(a)(i)); or

(5) Receive compensation for personal services from the applicant concern as directors or employees which is leemed to be excessive by SBA

(d) Non-section 8(a) concerns in the same or similar line of business are prohibited from having an ownership nterest in an applicant concern which s deemed by SBA to cause negative control over the applicant concern, as defined in 13 CFR 121.3(a)(i) (formery 13 CFR 121.3-2(a)(i)).

(e) A section 8(a) business concern nay continue participation in the proram subsequent to a change in its ownership. However, any change of ownership of an 8(a) business concern equires the prior written approval of SBA. Continued participation of the 8(a) concern under new ownership reuires compliance with all individual and business eligibility requirements of these regulations by the concern and the new owners. Failure of either an individual owner or the concern to naintain compliance constitutes a round for program termination.

(f) Applicant concerns owned and ontrolled by an Indian Tribe are eligible for participation in the section 8(a) rogram if the individuals who nanage and control the concern are ound to be socially and economically lisadvantaged by SBA, and the Tribe s found to be economically disadvanaged by SBA.

(g) Applicant concerns owned and ontrolled by a Regional Corporation r a Village Corporation as defined in 3 U.S.C. 1602 (Alaska Native Claims ettlement Act, Pub. L. 92-203, Deember 18, 1971) are eligible for paricipation in the section 8(a) program the individuals who manage and ontrol the concern are found to be socially and economically disadvantaged by SBA, and the Regional or Village Corporation is found to be economically disadvantaged by SBA.

§ 124.104 Control and management.

Except in the case of applicant concerns owned and controlled by an Indian tribe or a Regional Corporation or Village Corporation (*see* § 124.103(g)), an applicant concern's management and daily business operations must be controlled by an owner(s) of the applicant concern who has been (have been) determined to be socially and economically disadvantaged, and such owner(s) must own a greater percentage of the business entity than any nondisadvantaged owner, or in the case of a corporation, more voting stock than any nondisadvantaged stockholder.

(a) Individuals who are not socially and economically disadvantaged may be involved in the management of an applicant concern, and may be stockholders, officers, directors, or employees of such concern. However, such individuals shall not exercise actual control or have the power to control the operations of the applicant or section 8(a) business concern. The existence of control or the power to control shall be determined by the facts of each case.

(b) An applicant concern must be managed on a full-time basis by one or more persons who have been found by SBA to be socially and economically disadvantaged, and such person(s) must possess requisite management capabilities as determined by SBA. This precludes outside employment or other business interests by the individual which conflict with the management of the firm or prevent it from achieving the objectives of its business development plan. Any disadvantaged person upon whom section 8(a) eligibility is based, who is engaged in the management and daily business operations of the section 8(a) concern and who wishes to engage in regular outside employment must notify SBA of the nature and anticipated duration of the outside employment prior to engaging in such employment. SBA will review such notification for compli ance with the requirement of day-today management and control of the 8(a) concern.

§ 124.105 Social disadvantage.

(a) *General.* Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because their identity as a member of a group without regard to their individual qualities. The social disadvantage of individuals must stem from circumstances beyond their control.

(b) *Members of designated groups.* In the absence of evidence to the contrary, the following individuals are considered socially disadvantaged: Black Americans; Hispanic Americans; Native Americans (American Indians, Eskimos, Aleuts, or Native Hawaiians); Asian Pacific Americans (persons with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands, Northern Mariana Islands, Laos, Cambodia, or Taiwan); Subcontinent Asian Americans; and members of other groups designated from time to time by SBA according to procedures set forth at § 124.105(d) of this part.

(c) *Individuals not members of designated groups.* (1) Individuals who are not members of the above-named groups must establish their social disadvantage on the basis of clear and convincing evidence. A clear and convincing case of social disadvantage must include the following elements:

(i) The individual's social disadvantage must stem from his or her color; national origin; gender; physical handicap; long-term residence in an environment isolated from the mainstream of American society; or other similar cause not common to small business persons who are not socially disadvantaged.

(ii) The individual must demonstrate that he or she has personally suffered social disadvantage, not merely claim membership in a non-designated group which could be considered socially disadvantaged.

(iii) The individual's social disadvantage must be rooted in treatment which he or she has experienced in American society, not in other countries.

(iv) The individual's social disadvantage must be chronic, longstanding, and substantial, not fleeting or insignificant.

(v) The individual's social disadvantage must have negatively impacted on his or her entry into, and/or advancement in, the business world. SBA will entertain any relevant evidence in assessing this element of an applicant's case. SBA will particularly consider and place emphasis on the following experiences of the individual, where relevant: education, employment, and business history.

(A) *Education.* SBA shall consider, as evidence of an individual's social disadvantage, denial of equal access to business or professional schools; denial of equal access to curricula; exclusion from social and professional association with students and teachers; denial of educational honors; social patterns or pressures which have discouraged the individual from pursuing a professional or business education; and other similar factors.

(B) *Employment.* SBA shall consider, as evidence of an individual's social disadvantage, discrimination in hiring; discrimination in promotions and other aspects of professional advancement; discrimination in pay and fringe benefits; discrimination in other terms and conditions of employment; retaliatory behavior by a employer; social patterns or pressures which have channelled the individual into non-professional or non-business fields; and other similar factors.

(C) *Business history.* SBA shall consider, as evidence of an individual's social disadvantage, unequal access to credit or capital; acquisition of credit or capital under unfavorable circumstances; discrimination in receipt (award and/or bid) of government contracts; discrimination by potential clients; exclusion from business or professional organizations; and other similar factors which have retarded the individual's business development.

(d) *Minority group inclusion*—(1) *General.* Upon an adequate showing to SBA by representatives of a minority group that the group has suffered chronic racial or ethnic prejudice or cultural bias, and upon the request of the representatives of the group that SBA do so, SBA shall publish in the FEDERAL REGISTER a notice of its receipt of a request that it consider a minority group not specifically named in section 201 of Pub. L. 95-507 to have members which are socially disadvantaged because of their identification as members of the group for the purpose of eligibility for the section 8(a) program. The notice shall adequately identify the minority group making the request, and if a hearing is requested on the matter, the time, date and location at which such hearing is to be held. All information submitted to support a request should be addressed to the AAMSB-COD.

(2) *Standards to be applied.* In determining whether a minority group has made an adequate showing that it has suffered chronic racial or ethnic prejudice or cultural bias for the purposes of this regulation, SBA shall determine:

(i) If the group has suffered the effects of discriminatory practices or similar invidious circumstances over which its members have no control,

(ii) If the group has generally suffered from prejudice or bias,

(iii) If such conditions have resulted in economic deprivation for the group of the type which Congress has found exists for the groups named in Pub. L. 95-507, and

(iv) If such conditions have produced impediments in the business world for members of the group over which they have no control which are not common to all small business people.

If it is demonstrated to SBA by a particular group that it satisfies the above criteria, SBA will publish a notice under this regulation.

(3) *Procedure.* Once a notice is published under this regulation, SBA shall adduce further information on the record of the proceeding which tends to support or refute the group's request. Such information may be submitted by any member of the public, including Government representatives and any member of the private sector. Information may be submitted in written form, or orally at such hearings as SBA may hold on the matter.

(4) *Decision.* Once SBA has published a notice under this regulation, it shall afford a reasonable comment period of not more than thirty (30) days for public comment upon a request. It shall complete the reception of comments, including the holding of hearings within such comment period. Thereafter, SBA shall consider the comments received as expeditiously as possible, and shall render its final decision within 30 days of the close of receipt of information on the matter. Such decision shall take the form of a notice in the FEDERAL REGISTER, and SBA shall also inform the subject group representatives who have appeared in the proceeding of such decision in writing at the time it is made.

§ 124.106 Economic disadvantage.

(a) *General.* For purposes of the section 8(a) program, economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same or similar line of business and competitive market area who are not socially disadvantaged.

(b) *Factors to be considered.* In determining the degree of diminished credit and capital opportunities of a socially disadvantaged individual, consideration will be given to both the disadvantaged individual and the applicant concern with which he or she is affiliated. Factors to be analyzed depend upon the particular industry in which the applicant concern is involved. Such factors may include, but are not limited to, the following:

(1) *Personal financial condition of the disadvantaged individual.* This criterion is designed to assess the relative degree of economic disadvantage of the individual in comparison to other individuals, as well as the potential to capitalize or otherwise provide financial support to the business. The specific factors considered are: personal income for at least the past two years; total fair market value of all assets (except that the *equity* value of the individual's primary residence will

be considered); and the net worth of all holdings of the individual.

(2) *Business financial condition.* This criterion is designed to evaluate liquidity, leverage, operating efficiency and profitability of the applicant concern using commonly accepted financial ratios and percentages. This evaluation will be used to provide a financial picture of a firm at a specific point in time in comparision to other concerns in the same business area who are not socially disadvantaged. These factors are considered as indicators of a firm's economic disadvantage relative to businesses owned by non-socially disadvantaged individuals. Factors to be considered are business assets, net worth, income and profit. Also, factors to be compared include, but are not limited to: Current ratios, quick ratios, inventory turnover; accounts receivable turnover; sales to working capital; returns on assets; debt to net worth ratio; percentage return on investment; percentage gross profit margin; and percentage return on sales.

(3) *Access to credit and capital.* This criterion will be used to evaluate the ability of the applicant concern to obtain the external support necessary to operate a competitive business enterprise. The factors to be considered are: Access to long-term financing; access to working capital financing; equipment trade credit; access to raw materials and/or supplier trade credit; bonding capability.

(4) *Additional considerations.* A comparison will be made of the applicant concern's business and financial profile with profiles of businesses in the same or similar line of business and competitive market area. It is not the intent of the section 8(a) program to allow program participation to concerns owned and controlled by socially disadvantaged individuals who have accumulated substantial wealth, have unlimited growth potential and have not experienced or have overcome impediments to obtaining access to financing, markets and resources.

§ 124.107 Potential for success.

To be eligible to participate in the section 8(a) program, an otherwise eligible applicant concern must be determined to be one that with contract, financial, technical and management support will be able to successfully perform subcontracts awarded under the section 8(a) program, and further, with such support, will have a reasonable prospect for success in competition in the private sector within the maximum amount of time that a concern may be in the section 8(a) program (up to seven years). In addition, the AA/MSB-COD must make a determination that the procurement, financial, technical and management support necessary to enable the applicant concern to successfully complete the section 8(a) program is available from SBA or other identified and acceptable sources before the applicant concern may be admitted to the section 8(a) program.

§ 124.108 Additional eligibility requirements.

(a) *Individual character review.* If, during the processing of an application, adverse information is obtained from the section 8(a) program application or a credible source regarding criminal conduct by an individual applicant, no further action will be taken on the application until the adverse information has been forwarded through appropriate channels to the SBA's Inspector General for evaluation and that evaluation has been completed. The Inspector General will advise the AA/MSB-COD of his or her findings and the AA/MSB-COD will consider those findings as part of the process of evaluation of a particular application.

(b) *Standard of conduct.* The SBA Standards of Conduct regulations, 13 CFR 105, *et seq.*, apply to eligibility questions involving SBA employees and their relatives.

(c) *Individual eligibility limitations.* An individual's or business concern's eligibility may be used only once in qualifying for section 8(a) program participation.

(1) The AA/MSB-COD may reinstate a former section 8(a) program participant if:

(i) The section 8(a) concern has totally ceased its business operations; and

(ii) The section 8(a) concern voluntarily withdrew from the section 8(a) program due to—

(A) The health of a disadvantaged owner;

(B) Acts of God which destroyed or severely disrupted the operation of such concern; or

(C) Such other circumstances beyond the control of the section 8(a) concern which inequitably interrupted the continued participation of the concern in the section 8(a) program.

(2) Where a section 8(a) concern is reinstated pursuant to paragraph (c)(1) of this section, it will continue in the section 8(a) program for that amount of time which remained in its Fixed Program Participation Term at the time it withdrew from the program. A new Fixed Program Participation Term shall not be established for such concern.

(d) *Manufacturers and regular dealers.* Each applicant concern which intends to manufacture or furnish materials, supplies, articles and equipment in the performance of section 8(a) subcontracts must be determined to be a manufacturer or regular dealer as defined in the Walsh-Healey Public Contracts Act Regulations found at 48 CFR Subpart 22.6.

§ 124.109 Ineligible businesses.

(a) *Brokers and Packagers.* Brokers and packagers are ineligible to participate in the section 8(a) program. These types of businesses do not satisfy the definition of a manufacturer or regular dealer, as stated in § 124.100 of this part.

(b) *Debarred or Suspended Person or Concern.* Individuals or concerns who are debarred, suspended, or are found to be an ineligible bidder by any contracting agency of the Federal Government pursuant to 48 CFR Chapter I, Subpart 9.4 are ineligible for admission into the section 8(a) program during the period of debarrment, suspension, or status as an ineligible bidder. Prior to approval of any applicant concern, the applicant concern will certify that the applicant concern and the disadvantaged individual(s) upon whom eligibility is based is not at that time debarred, suspended or otherwise an ineligible bidder.

§ 124.110 Fixed program participation term.

(a) Every section 8(a) program participant is subject to a Fixed Program Participation Term. A Fixed Program Participation Term and any extension thereof establishes the ultimate time period during which a concern may remain in the section 8(a) program and the conditions of participation, regardless of whether competitiveness is reached by the concern.

(b) The Fixed Program Participation Term must be negotiated between SBA and each small concern which has applied for participation in the program and must be established by mutual agreement prior to the concern's admission to the program.

(c) The provisions of the Fixed Program Participation Term, including the time limitation thereof, will be set forth in the SBA approved business plan of the section 8(a) concern which must be established prior to the applicant concern's admission to the program.

(d) For concerns applying for entry into the program, the Fixed Program Participation Term will begin on the date of award of the concern's first section 8(a) subcontract.

(e) The maximum Fixed Program Participation Term for any concern is five years.

(f) Not less than one year prior to the expiration of the Fixed Program Participation Term, a concern may request SBA to review and extend its Fixed Program Participation Term for a period not to exceed the difference between the Fixed Program Participation Term established in the business plan and the maximum Fixed Program Participation Term of five years, plus two years. For business concerns which have a Fixed Program Participating Term of one year, a request for extension shall be deemed to be timely if postmarked no later than 10 days subsequent to the receipt by the concern of notification of award of the concern's first section 8(a) subcontract. There may be no further extensions.

(g) The criteria which SBA will use in negotiating a Fixed Program Participation Term or in considering a request for an extension thereof are as follows:

(1) The factors referenced in § 124.106 of these regulations for determining economic disadvantage.

(2)(i) The number and dollar amount, and the progressively decreasing importance, of section 8(a) contract support that it is anticipated will be necessary to achieve competitiveness. In order to maximize limited program resources, SBA will emphasize business plans anticipating lesser amounts of section 8(a) contract support to reach competitiveness.

(ii) In considering whether to grant an extension of a Fixed Program Participation Term, the section 8(a) contract support previously received by the concern will be a factor. An SBA determination that such previous contract support has failed to appreciably contribute toward a timely achievement of competitiveness will be a significant factor in consideration of the request for extension.

(3)(i) The number and dollar amount and the progressively increasing importance of contract support, other than section 8(a) contract support, that it is anticipated will be necessary to achieve competitiveness. SBA will emphasize business plans having greater reliance on this non-section 8(a) contract support to reach competitiveness.

(ii) In considering a Fixed Program Participation Term extension request, the non-section 8(a) contract support previously received by the firm will be a factor. An SBA determination that the concern has failed to progressively increase the importance of such non-section 8(a) contract support during its previous participation in the program will be a significant factor in SBA's consideration of the request for extension.

(4)(i) The length of time that it is anticipated will be necessary to achieve competitiveness. In order to maximize limited program resources, SBA will emphasize program participation for those concerns closer to achieving competitiveness.

(ii) In considering requests for Fixed Program Participation Term extensions, the length of time during which the concern has previously participated in the program will be a factor.

(5)(i) The degree to which it is anticipated that Advance Payments and Business Development Expense will be necessary to enable a concern to successfully complete section 8(a) contracts and the extent to which reliance upon such proceeds will progressively decrease in importance. In order to maximize limited SBA resources and to increase exposure to regular competitive procedures, SBA will emphasize maximum use of conventional governmental and private resources in performing such contracts.

(ii) In considering requests for a Fixed Program Participation Term extension, the previous Advance Payments and Business Development Expense already received by the concern will be a factor. An SBA determination that such Advance Payments and Business Development Expense support has failed to progressively decrease in importance during the concern's previous participation in the program will be a factor toward limiting or denying extension of the Fixed Program Participation Term and the conditions thereof.

(6)(i) The rate at which it is anticipated that a concern will decrease its reliance upon all forms of program support, especially section 8(a) contracts support, in reaching competitiveness at the end of the Fixed Program Participation Term.

(ii) In considering Fixed Program Participation Term extensions, a factor will be the previous rate at which the concern has decreased its reliance upon program support and correspondingly increased its reliance upon conventional governmental and private contract business. An SBA determination that the concern has failed to appreciably improve its rate of business reliance in this manner will be a factor toward limiting or denying the Fixed Program Participation Term extension and the conditions thereof.

(h) No section 8(a) contracts may be awarded to any section 8(a) concern unless it has received and is operating under an SBA approved Fixed Program Participation Term.

(i) Nothing in this section shall be onstrued to limit SBA from initiating ermination, completion or suspension ctions, pursuant to §§ 124.112, 24.110(k), or 124.113, respectively, uring any Fixed Program Participaion Term granted hereunder.

(j) Upon the conclusion of its Fixed rogram Participation Term, includng any extension thereof, a concern ill cease to be a program participant. his cessation of program participaion will occur without the necessity f any additional action by SBA. It ill not give rise to any rights, claims r prerogatives on behalf of the conern. Cessation of program participaion at the conclusion of the Fixed rogram Participation Term is not ubject to the requirements of section (a)(9) of the Small Business Act (15 .S.C. 637(a)(9)), or any of SBA's imlementing rules and regulations.

(k) *Program completion.* (1) When a ection 8(a) business concern has subtantially achieved the goals and obectives set forth in its business plan rior to the expiration of its Fixed rogram Participation Term, and has emonstrated the ability to compete n the marketplace without assistance nder the section 8(a) program, its articipation within the program shall e determined by SBA to be completd.

(2) In determining whether a conern has substantially achieved the oals and objectives of its business lan and has attained the ability to ompete in the marketplace without ection 8(a) program assistance, the ollowing factors, among others, shall e considered by SBA.

(i) Positive overall financial trends, cluding but not limited to:

(A) Profitability;

(B) Sales, including improved ratio f non-section 8(a) sales;

(C) Net worth, financial ratios, workg capital, capitalization, access to redit and capital;

(D) Ability to obtain bonding;

(E) A positive comparison of the secon 8(a) business concern's business nd financial profile with profiles of on-section 8(a) businesses in the me area or similar business category; nd

(F) Good management capacity and capability.

(3) Upon determination by SBA that a section 8(a) business concern's participation in the section 8(a) program has been completed pursuant to paragraph (k)(1) of this section, SBA shall so advise the firm and shall issue it an order to show cause why its participation in the section 8(a) program should not be deemed to be completed. The section 8(a) business concern shall be afforded an opportunity for a hearing on the record in accordance with Chapter 5 of Title 5 of the United States Code, at which hearing it may contest such determination. Such a hearing will be held pursuant to the procedures of SBA's Office of Hearings and Appeals set forth at Part 134 of these regulations.

(4) Subsequent to the completion of such hearing, based upon the record established therein, and after consideration of the initial decision of the Administrative Law Judge who has conducted the hearing, the AA/MSB-COD shall render a final decision regarding the completion of the section 8(a) business concern's participation in the program. Prior to a final decision, the subject section 8(a) business concern may have full rights of participation in the section 8(a) program.

§ 124.111 Mechanics for extension of a fixed program participation term.

As stated in § 124.110(f), a section 8(a) concern's Fixed Program Participation Term (FPPT) may be extended only once, and only if the application for such an extension is made not less than one year prior to the expiration of the firm's original Fixed Program Participation Term.

(a) *The request.* The section 8(a) concern must make a request for extension in writing by certified mail, return receipt requested, or by registered mail, to the SBA field office servicing its account, not less than one year prior to the expiration of the FPPT, specifically requesting an extension of its FPPT.

(b) *SBA response.* Upon receipt of a timely request, the appropriate SBA field office will forward to the section 8(a) concern all forms needed to process the request. All required forms must be completed and returned to SBA within 45 days of receipt along with a persuasive narrative rationale to establish the basis for justifying the requested extension.

(c) *Narrative rationale.* The narrative rationale submitted by the section 8(a) concern must detail the following:

(1) The firm's progress since admission into the 8(a) program;

(2) Areas where the firm has failed to make progress anticipated when the original FPPT was set;

(3) Reasons for lack of progress;

(4) Benefits to be derived from an extension, other than increase in contract support;

(5) Any extenuating circumstances unique to the firm which cause an extension to be necessary and appropriate;

(6) Any other facts which the firm believes support its request.

(d) *Non waiver of time limits.* Neither the requirement of § 124.110(f) to make a request for an extension of a concern's FPPT not less than one year prior to the expiration of a concern's original FPPT, nor the requirement of § 124.111(b) to return all forms and documentation completed along with the supporting narrative within 45 days may be waived. Failure to meet either time limit will result in denial of an extension of an FPPT.

(e) *Approval authority.* Unless otherwise delegated by the Administrator, the AA/MSB-COD has final authority to approve the concern's request for an extension, and may in his discretion approve an extension less than that requested, set terms and conditions for any extension granted, or deny any extension. The concern will be advised in writing of the Agency's final decision.

§ 124.112 Program termination.

(a) Participation of a section 8(a) business concern in the section 8(a) program may be terminated by SBA prior to the expiration of the concern's fixed program participation term or extension thereof, if any, for good cause. The term good cause as used in the regulation means conduct violative of applicable State and Federal law or regulations or the pursuit of business practices detrimental to business development of an 8(a) concern. Examples of good cause include, but are not limited to, the following:

(1) Failure to continue to meet any one of the standards of program eligibility set forth in these regulations.

(2) Failure by the concern to maintain status as a small business under the Small Business Act, as amended, and the regulations promulgated thereunder for each of the Standard Industrial Code designations contained in the participating concern's business plan.

(3) Failure by the concern for any reason, including the death of an individual upon whom eligibility was based, to maintain ownership and control by the persons(s) who has (have) been determined to be socially and economically disadvantaged pursuant to these regulations.

(4) Failure by the concern to obtain written approval from SBA prior to any changes in ownership and management control.

(5) Failure by the concern to disclose to SBA the extent to which nondisadvantaged persons or firms participate in the management of the section 8(a) business concern.

(6) Failure by the concern to provide SBA with required quarterly or annual financial statements within ninety days of the close of the reporting period, or required audited financial statements within 180 days of the close of the reporting period. Failure to provide SBA with requested tax returns, reports, or other available data within 30 days of the date of request.

(7) Failure by the concern to submit an updated business plan within 30 days of receipt of request, without an extension of time which has been approved by SBA.

(8) Failure by the concern to provide documents or otherwise respond to requests for information relating to the section 8(a) program from SBA or other authorized government officials.

(9) Cessation of business operations by the concern.

(10) Failure by the concern to achieve the goals cited in its original or modified business plan as a result of repeated refusals to accept or utilize SBA assistance.

(11) Failure by the concern to pursue competitive and commercial business in accordance with the business plan, or failure to make reasonable efforts to achieve competitive status.

(12) Inadequate performance of awarded section 8(a) procurement subscontracts by the concern.

(13) Failure by the concern to pay or repay significant financial obligations owed to the Federal Government.

(14) Failure by the concern to obtain and keep current any and all required permits, licenses, and charters.

(15) Diversion of funds from the section 8(a) business concern to any other individual, subsidiary, firm, or enterprise which is detrimental to the achievement of the section 8(a) business concern's business plan.

(16) Unauthorized use of business development expense funds and/or advance payment funds. Violation of an advance payment or business development expense agreement.

(17) Failure by the concern to obtain prior SBA approval of any management agreement or joint venture agreement relative to the performance of a section 8(a) subcontract. Violation of any requirements of a management or joint venture agreement approved by SBA by either the section 8(a) concern or one of the joint venturers.

(18) Failure by the concern to obtain approval from SBA before subcontracting under a section 8(a) subcontract, or failure by the concern to abide by any conditions imposed by SBA upon such approval.

(19) Violation by the concern of a section 8(a) subcontract provision which prohibits contingent fees and gratuities; or failure to disclose to SBA fees paid or to be paid, or costs incurred or committed to third parties, directly or indirectly, in the process of obtaining section 8(a) contracts or subcontracts.

(20) Knowing submission of false information to SBA on behalf of a section 8(a) business concern by its principals, officers, or agents, or by its employees, where the principal(s) of the section 8(a) concern knows or should have known such submission to be false.

(21) Debarment or suspension of the concern by the Comptroller General, the Secretary of Labor, Director of the Office of Federal Contract Compliance, or any contracting agency pursuant to FAR Subpart 9.4, 48 CFR Ch. 1.

(22) Conviction of a section 8(a) business concern or a principal of a section 8(a) business concern for any of the following:

(i) Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract;

(ii) Violation of the Organized Crime Control Act of 1970;

(iii) Embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a government contractor;

(iv) Violation of any Federal Antitrust Statute; or

(v) Commission of any felony not specifically listed above by the concern or any of its principals.

(23) Willful failure on behalf of a section 8(a) business concern to comply with applicable labor standards obligations.

(24) Violation of any terms and conditions of the 8(a) program Participation Agreement.

(25) Violation by a section 8(a) business concern, or any of its principals, of any of SBA's significant rules and regulations.

(b) Upon determination by the SBA that a section 8(a) business concern's participation in the section 8(a) program should be terminated for good cause, the section 8(a) business concern shall be afforded an opportunity for a hearing on the record in accordance with Chapter 5 of Title 5 of the United States Code, at which hearing it may contest such determination. Such a hearing will be held pursuant to the procedures established for SBA's Office of Hearings and Appeals set forth at Part 134 of this title.

(c) Subsequent to the completion of such hearing, upon the record established therein, and after consideration of the initial decision of the Administrative Law Judge who has conducted the hearing, pursuant to §§ 134.32 and 134.34 of these regulations, the AA/MSB-COD shall render a final decision regarding the termination, for good cause, of the 8(a) business concern's participation in the program.

(d) After the effective date of a program termination as provided for herein, a section 8(a) business concern is no longer eligible to receive any section 8(a) program assistance. Such concern is obligated to complete previously awarded section 8(a) subcontracts.

§ 124.113 Suspension of program assistance.

(a) Only upon the issuance of an order to show cause why a section 8(a) business concern should not be terminated from the program, the Administrator of SBA or the AA/MSB-COD may suspend contract support and other forms of 8(a) program assistance to that concern for a period of time not to exceed the time necessary to resolve the issue of the concern's termination from the program under the procedures set forth in Part 134 of these regulations. The institution of such a suspension will not occur in conjunction with each proposed termination, but will only occur when the SBA Administrator or AA/MSB-COD determines that the Government's interests are jeopardized by continuing to make assistance available to a section 8(a) business concern and immediate action to protect those interests is necessary.

(b) Immediately upon SBA's determination to suspend a section 8(a) concern, SBA will furnish that concern with a notice of the supension by certified mail, return receipt requested, to the last known address of the concern. If no receipt is returned within ten calendar days from the mailing of the notice, notice will be presumed to have occurred as of that time. The notice of suspension will provide the following information:

(1) The reason for the suspension which will be the grounds upon which the order to show cause has been issued;

(2) That the suspension will continue pending the completion of further investigation or the termination proceeding or some other specified period of time;

(3) That awards of section 8(a) subcontracts, including those which have been "self-marketed" by an 8(a) concern, will not be made during the pendency of the suspension unless it is determined by the head of the relevant procuring agency or his or her authorized representative to be in the best interest of the Government to do so, and the SBA Administrator or the AA/MSB-COD adopts that determination;

(4) That the concern is obligated to complete previously awarded section 8(a) subcontracts;

(5) That the suspension is effective nationally throughout the SBA;

(6) That a request for a hearing on the suspension will be considered by the Administrative Law Judge hearing the termination proceeding and granted or denied as a matter of his or her discretion. It is contemplated that in most cases a hearing on the issue of the suspension will be afforded if the participant requests one. However, no such hearing may be granted if the suspension is based upon advice from either the Department of Justice or the Department of Labor that such a hearing would prejudice substantial interests of the Government. A hearing on the suspension will commence as soon as possible following the decision of the Administrative Law Judge to grant a request; but in no case more than 20 calendar days after the Administrative Law Judge's ruling if the request is granted. At the close of such suspension hearing, the Administrative Law Judge will make a recommended decision on the matter to the AA/MSB-COD who will then issue a final decision upholding or lifting the suspension.

(c) Any suspension which occurs in accord with these regulations will continue in effect until such time as the SBA lifts it or the section 8(a) business concern's participation in the program is fully terminated. If all program assistance to a section 8(a) business concern has been suspended under these regulations, and that concern's participation in the program is not terminated, an amount of time equal to the duration of the suspension will be added to the concern's fixed program participation term.

§ 124.201 Processing applications.

It is SBA's policy that an individual or business has the right to apply for section 8(a) assistance, whether or not there is an appearance of eligibility.

§ 124.202 Place of filing.

An application for admission is to be filed, and approved cases are to be serviced in the SBA field office serving the territory in which the principal place of business of the applicant concern is located. Principal place of business means the location at which the business records of the applicant concern are maintained.

§ 124.203 Applicant representatives.

An applicant concern may employ at its option outside representatives in connection with an application for section 8(a) program participation. If the applicant chooses to employ outside representation such as an attorney, accountant, or others, the requirements of 13 CFR 103 dealing with the appearance and compensation of persons appearing before SBA are applicable to the conduct of the representative.

§ 124.204 Requirement support determination.

SBA shall first make a determination that there is a reasonable likelihood of section 8(a) requirements available to support the applicant concern. If the necessary requirement support is not available, the applicant concern shall be informed in writing that no further action can be taken on its application for participation in the section 8(a) program. If the necessary requirements support is determined to be available, the applicant concern may continue to submit the required application forms.

§ 124.205 Forms and documents required.

Each 8(a) applicant concern must submit the forms and attachments thereto required by SBA when making application for admission to the section 8(a) program including but not limited to financial statements and Federal personal and business tax returns.

§ 124.206 Approval and declination of applications for eligibility.

The AA/MSB-COD has final authority over approval or declination of applications for admission to the section 8(a) program. If the AA/MSB-COD declines an application, he or she will notify the applicant in writing giving detailed reasons for the decline and informing the applicant of the right to request a reconsideration within 30 days of receipt of the decline letter. The AA/MSB-COD will also inform the applicant to submit in writing to the field office any subsequent information and documentation pertinent to rebutting the reason(s) for decline. If the application is declined by the AA/MSB-COD on reconsideration, no new application will be accepted within one year of the reconsideration decision.

§ 124.207 Business activity.

(a) Eligible concerns will be approved for section 8(a) program participation according to their primary industry classification, as defined in § 124.100 of this part. The primary industry classification relevant to a given concern and related Standard Industrial Classification Code designations will be stated in a participating concern's business plan upon the concern's entry into the section 8(a) program and will be subject to change thereafter only if a condition of subsection (b) is met. A participating section 8(a) business concern will be eligible to receive only Government contracts pursuant to the section 8(a) program which are classified under the Standard Industrial Classification Codes stated in its business plan. (*See* definition of "business plan," § 124.100(a).) A participating section 8(a) business concern may, however, receive Government contracts classified in other Standard Industrial Classification Codes through other Government procurement procedures. As 8(a) concerns develop, it is essential that they pursue commercial and competitive Government contracts to supplement section 8(a) sales and to achieve logical business progression or diversification.

(b) Requests for changes in Standard Industrial Classification Code designations stated in a business plan will be considered by the relevant SBA Regional Administrator only under the circumstances indicated below.

(1) Such Regional Administrator may approve an amendment to the Standard Industrial Classification Code designations in a section 8(a) concern's business plan if:

(i) The new Standard Industrial Classification Code designation relates to a unique procedure or product that the section 8(a) concern has developed; or

(ii) SBA determines that an additional Standard Industrial Classification Code designation is needed to correct significant limitations in section 8(a) contract support which result from administrative or regulatory actions by a contracting agency, which are beyond the control of the section 8(a) concern, and which were not contemplated by the original business plan.

(2) The Administrator or his designee may approve an amendment to the Standard Industrial Classification Code designations in a section 8(a) concern's business plan if the Administrator or his designee determines that absent a Standard Industrial Classification Code designation change, the section 8(a) concern would be unable to achieve reasonable section 8(a) development.

§ 124.301 The provision of requirements support for 8(a) firms.

(a) These regulations govern the mechanics of the provision of requirements (contract) support to section 8(a) business concerns. They are to be read in conjunction with § 124.302 below.

(b) Basic Principles of Requirements Support.

(1) An 8(a) subcontract will be provided to a section 8(a) concern only when consistent with that concern's business development needs.

(2) An 8(a) concern will be provided a section 8(a) contract only when the procurement is consistent with the concern's capabilities as identified in its business plan by means of Standard Industrial Classification (SIC) codes.

(3) The aggregate dollar amount of 8(a) contracts to an 8(a) concern for any Federal fiscal year may not exceed by more than 25 percent the applicable annual 8(a) contract support level approved by SBA as reflected in the concern's business plan. This shall not preclude an 8(a) concern from requesting an increase in its approved 8(a) contract support level on other than an annual basis. Such request must be supported by a revised business plan and evidence that the firm has the capability to perform at the increased level.

(4) SBA does not guarantee any particular level of contract support to a section 8(a) business concern by the approval of its business plan.

(5) SBA is not required to make an award of any particular contract, and should it make an award, SBA is not required to award a contract to a particular 8(a) concern. Nonetheless, SBA will usually reserve a procurement for possible 8(a) award in favor of an 8(a) concern which initially self-marketed the procurement, provided the firm needs the requirement to satisfy its business plan projections without exceeding them.

(6) In cases in which SBA must select an 8(a) concern for possible award from among more than one concern which appear to be qualified to perform the contract, the selection will be based upon consideration of relevant factors, including the following:

(i) Technical capability, including the ability to perform the contract, the concern's organizational structure, the experience and technical knowledge of its key employees, and technical equipment and facilities.

(ii) Financial capacity, including the availability of adequate financial resources or the ability to obtain such resources as required.

(iii) Ability to comply with the required delivery or performance schedules.

(iv) Ability to obtain any necessary bonding.

(v) Any applicable geographic limitations.

(vi) The concern's need for the specific contract to further the development objectives of the concern's business plan, in light of any other potential contracts under consideration.

(vii) The overall likelihood of successful performance of the proposed requirement.

(viii) Past amount of 8(a) contract support received by the concern and the performance record on past 8(a) contracts.

(ix) Current contracts in process, and progress toward timely delivery of those contracts.

(x) Length of time inthe 8(a) program and the proximity of the FPPT date. (xi) Amount of BDE and advance payment support received since entering the 8(a) program and required to perform the present requirement. (xii) Which 8(a) concern initially identified the procurement, if any.

(7) In cases in which SBA must select an 8(a) concern for possible award of a professional service contract (except CPA audit services) SBA may, in its discretion, arrange for the evalution of technical capabilities of several concerns, which appear to be most qualified, by the procuring agency itself. In such cases, SBA will request a written report of the evaluation including the criteria used, the results found, and an overall evaluation of each concern as technically or not technically acceptable for their particular procurement. SBA will make the final selection.

(8) SBA will not accept for 8(a) award proposed procurements not previously in the section 8(a) program if any of the following circumstances exist:

(i) Public solicitation has already been issued for the procurement as a small business set-aside in the form of an Invitation for Bid (IFB), Request for Proposal (RFP) or a Request for Quotation (RFQ). Providence of a general intent to set aside, such as Procurement Information Notices (PIN's), annual procurement forecasts or past procurements by set aside, is insufficient reasons to preclude the procurement from 8(a) consideration.

(ii) The procuring agency will award the contract by noncompetitive means to a small disadvantaged concern whether or not it is presently in the 8(a) program.

(iii) There is a reasonable probability that a small disadvantaged concern, whether or not a section 8(a) concern, can successfully compete for the contract under conventional competitive procedures.

(iv) SAB has made a written determination that acceptance of the procurement for an 8(a) award would have an adverse impact on other small business programs or individual small business, whether or not the affected small business, is in the section 8(a) program.

(A) In determining whether or not adverse impact exists, SBA will consider relevant factors, including but not limited to:

(*1*) Whether or not SBA's acceptance of a proposed *National* buy requirement is likely to result in SBA's taking an inordinate portion of total procurements in subject industry to the detriment of the small business set-aside program, or

(*2*) Whether or not SBA's acceptance of a proposed *local* buy requirement is likely to result in SBA taking an inordinate portion of total procurements, in subject industry within a given SBA region to the detriment of the small business set-aside program.

(B) SBA presumes adverse impact to exist when a small business concern has been the recipient of two or more consecutive awards of the item or service within the last 24 months, and the estimated dollar value of the award would be 25 percent or more of its most recent annual gross sales (including those of its affiliates).

(c) Procedures for Obtaining Requirements Support. (1) SBA procurement center representatives (PCR's) will screen proposed procurements for possible 8(a) contracts, in accordance with 13 CFR Part 125.6.

(2) A requirement for possible award may be identified by SBA, a particular 8(a) concern, or the procuring activity itself. Once identified by whatever means, SBA shall verify the appropriateness of the SIC Code designation assigned to the requirement and shall select and nominate to the procuring agency an 8(a) concern for possible award. The selection will be made pur-

suant to these regulations and will be based on the business plan and such supplemental materials as SBA may request. If the 8(a) concern fails to provide SBA with the supplemental materials requested within any particular time specified by SBA, SBA will make its selection based solely on information contained in the concern's business plan.

(3) SBA's nomination of a section 8(a) concern to perform an indentified procurement shall be communicated to the procuring activity in writing with notice to the 8(a) concern.

(4) If the procuring activity responds to SBA's nomination, or request for commitment, by making a commitment to SBA, SBA will then match the specific needs of the procurement with the specific capabilities of the selected 8(a) concern, relying upon the business plan and such supplemental or updated material as SBA in its discretion shall require. To facilitate matching, and to the extent reasonably available, SBA will obtain from the procuring activity the complete procurement package, which contains plants, specifications, delivery schedules, labor rates and so forth, along with the following:

(i) The title or name or work to be performed or items to be delivered.

(ii) The estimated period of performance.

(iii) The SIC code of the item or service.

(iv) The PSC number used by the Federal Procurement Data Center.

(v) The procuring agency dollar estimate of the requirement (current government estimate).

(vi) Any special requirement restrictions or geographical limitations.

(vii) Any special capabilities or disciplines needed for contract performance.

(viii) The type of contract to be awarded, such as firm fixed price, cost reimbursement, or time and materials.

(ix) A list of contractors who have performed on this specific procurement during the previous 36 months.

(x) A statement that public solicitation for the specific procurement has not been issued for small business set aside.

(xi) A statement that the procurement cannot reasonably be expected to be won by a disadvantaged concern under normal competition.

(xii) The nomination of any particular 8(a) concern designated for consideration, including a brief justification, such as one of the following:

(A) The requirement is a result of an unsolicited proposal and the buying activity is unable to justify a sole-source award.

(B) The 8(a) concern through its own efforts, marketed the requirement and caused it to be reserved for the 8(a) program.

(C) The procuring agency has determined that the recommended concern has unusual technical qualifications to perform.

(5) Within ten working days of a commitment from a procuring activity identifying a particular 8(a) concern, SBA will determine whether a proper match exists, and will contract the procuring activity to arrange for initiation of contact negotiations. A letter accepting the commitment should normally be sent to the procuring activity at this time. Should contract negotiations be successful and result in a proposed award to the 8(a) concern, SBA will provide a Certification of SBA's Competency as a contract provision pursuant to § 124.302(c) of these regulations. Should SBA determine that a proper match does not exist, it will so advise the affected 8(a) concern, and may then select and nominate an alternative 8(a) concern to the procuring activity which, in the opinion of SBA, does match with the procurement, if any such concern exists.

(6) Should a procuring activity offer a contract to SBA as an open requirement, SBA will select and nominate in accordance with these regulations an 8(a) concern which appears to be qualified, subject to the following additional procedures:

(i) If the contract is a local buy item, the portfolio of 8(a) concerns maintained by the SBA district office where all or most of the work is to be performed or the items delivered will be examined initially for selection of a qualified 8(a) concern. If none are found to be qualified, the requirement may be considered for other 8(a) concerns located within the appropriate SBA region, or the requirement may be considered for 8(a) concerns located in immediately adjacent regions.

(ii) If the procurement is a national buy item, it shall be referred to SBA's Central Office. Central Office will allocate national buy requirements to the regional offices on an equitable basis, and regional offices will allocate national buy requirements to the districts on an equitable basis.

§ 124.302 8(a) Contracts and subcontracts.

(a) *General.* It is the policy of SBA to enter into contracts with other government agencies and subcontract the performance of such contract to concerns admitted to the section 8(a) program pursuant to section 8(a)(1)(C) of the Small Business Act, at prices which will enable a company to perform the contract and earn a reasonable profit.

(b) *Performance of work by the 8(a) subcontractor.* To assure the accomplishment of the purposes of the program, each 8(a) subcontractor shall be required to perform work equivalent to the following percentages of the total dollar amount of each subcontract, exclusive of material costs, with its own labor force:

(1) Manufacturing—50 percent.

(2) Construction:

(i) General Construction—15 percent.

(ii) Special Trades, Such as Electrical, Plumbing, Mechanical, etc.—25 percent.

(3) Professional Services—55 percent.

(4) Nonprofessional Services—75 percent.

The 8(a) concern is required to include in its proposal to perform a given contract a statement that it agrees to perform the required percentage of the work with its own labor force. Refusal of the concern to provide such a statement will result in the contract not being awarded.

(c) *Certification of SBA's competency.* (1) SBA will not certify as to its competency, as provided by section 8(a)(1)(A) of the Small Business Act, without first determining that the section 8(a) concern it intends to subcontract to is responsible to perform the contract in question. If SBA determines that the concern lacks the capability, competency, capacity, credit, integrity, perseverance, and tenacity to perform on a specific 8(a) subcontract, the contract will not be awarded. In addition, SBA will also certify that an 8(a) concern is eligible under the Walsh-Healey Public Contracts Act, 41 U.S.C. 35(a) for each individual 8(a) subcontract. An 8(a) concern which has not submitted required financial statements to SBA will be deemed not responsible to receive 8(a) subcontracts.

(2) SBA's determination not to award an 8(a) subcontractor a specific 8(a) subcontract because the concern lacks an element of responsibility, or is ineligible under the Walsh-Healey Public Contracts Act, does not constitute a denial of total section 8(a) program participation for the purposes of section 8(a)(9) of the Small Business Act.

(d) *Contract administration.* SBA may delegate its authority to administer section 8(a) subcontracts to the procuring agency or any Federal agency designated by it. This is done through the use of special clauses in the contract between SBA and the procuring agency, or by letter, as appropriate.

(e) *Contract termination.* (1) A decision to terminate a specific section 8(a) subcontract for default is made by the procuring activity contracting officer in cooperation with SBA. The contracting officer will advise SBA in advance of his/her intent to terminate for default the 8(a) subcontract. SBA may provide whatever program benefits as are reasonably available to the 8(a) concern in order to prevent termination for default of the contract. The contracting officer will be made aware of this effort. If, despite the efforts of SBA, in the opinion of the procuring activity contracting officer grounds for termination continue to exist, he/she may terminate the 8(a) subcontract for default.

(2) In cooperation with SBA, the procuring activity contracting officer may terminate a section 8(a) subcontract for convenience at any time it is determined in the best interest of the government to do so.

(f) *Disputes and appeals.* (1) SBA is not subject to the Disputes Clause of a specific contract, and SBA is not a party to and does not appear at or participate in appeals brought under such a clause in its own behalf or on behalf of an 8(a) concern.

(2) If a dispute between an 8(a) subcontractor and the procuring activity contracting officer arises under the subcontract, it will be decided unilaterally by the procuring activity contracting officer. The 8(a) subcontractor has the right to appeal the decision of the procuring activity contracting officer under the Contract Disputes Act of 1978.

§ 124.401 Advance payments.

(a) *General.* (1) Advance payments are disbursements of money made by SBA to a section 8(a) business concern prior to the completion of performance of a specific section 8(a) subcontract. Advance payments are made for the purposes of assisting the section 8(a) business concern in meeting financial requirements pertinent to the performance of the subcontract. The gross amount of advance payments must be determined by SBA prior to commencement of performance of the contract. Any subsequent change in the gross amount of advance payments must be justified in writing by SBA as to amount and purpose. Advance payments are to be awarded only after all other forms of financing have been considered by SBA and rejected as unacceptable to support performance of the subcontract. Advance payments must be liquidated from proceeds derived from the performance of the specific section 8(a) subcontract to which they pertain. However, this does not preclude repayment of such advance payments from other revenues of the business, except from other advance payments and business development expenses (as defined hereinafter in these regulations); provided such repayment must occur according to the liquidation schedule established by the subcontract under which the advance payments were made. The proceeds derived from the performance of the specific section 8(a) subcontract must be deposited by the procuring agency in a special bank account established exclusively for the purpose of administering the advance payments. These proceeds will be used to liquidate the advance payments. No withdrawals of such subcontract proceeds from the special bank account may be made by the section 8(a) business concern which are inconsistent with the disbursement schedule established by the subcontract under which the advance payments were made.

(2) Advance payments shall not be made to a section 8(a) business concern in any case in which the section 8(a) business concern has assigned its rights to receive any payment under the specific section 8(a) subcontract to any person or entity, unless such assignment shall be made to SBA or to a Federal agency in regard to the receipt by the section 8(a) business concern of a progress payment for any specific section 8(a) subcontract.

(3) In no event shall the total amount of advance payments for a section 8(a) business concern exceed 90 percent of the outstanding unpaid proceeds of the section 8(a) subcontract to which the advance payments relate.

(4) SBA shall not charge interest on advance payments disbursed pursuant to these regulations.

(b) *Requirements.* (1) Advance payments may be approved for a section 8(a) business concern when all of the following conditions are found by SBA to exist:

(i) A section 8(a) business concern does not have adequate working capital to perform a specific section 8(a) contract.

(ii) Adequate and timely financing is not available on reasonable terms to provide necessary capital.

(iii) The section 8(a) business concern has established or agrees to establish and maintain financial records and controls which will provide for complete accountability and required reporting of advance payment funds. These records must be made available upon request for review and copying by SBA and other appropriate Federal officials.

(iv) A company may receive an advance payment on a section 8(a) subcontract only in instances in which that company has no unliquidated advance payments outstanding on another section 8(a) subcontract which is completed, terminated or in default, unless such unliquidated advance payment is due *only* to the contracting agency's delay in making final payment to the section 8(a) concern which has successfully completed the subcontract.

(c) *Procedure.* To be eligible to receive advance payments, a section 8(a) business concern must meet the conditions set forth above and must comply with the following procedure.

(1) A section 8(a) business concern desiring to receive an advance payment in connection with any section 8(a) subcontract shall:

(i) Submit a written request for advance payment to the appropriate SBA Regional Administrator or his designee. Such request must include detailed documentation requested by SBA as evidence to support the need for such funds and proof that working capital financing cannot be found upon terms acceptable pursuant to § 124.401(b)(ii) above, from financing institutions.

(ii) The section 8(a) business concern must select a commercial bank which is a member of the Federal Reserve System in which it must establish a special non-interest bearing bank account for the deposit of payments made to it by the procuring agency pursuant to the performance of the subcontract(s). This special account must be a demand deposit account. The appropriate SBA Regional Administrator shall designate at least two SBA employees to serve as countersignatories on the special bank account.

(A) Disbursements from the account will be made only upon the authorized signatures of the section 8(a) concern and one of the designated SBA employees.

(B) Under no circumstances shall the requirement for an SBA employee countersignature be waived.

(C) At the time that SBA disburses advance payment funds into the special bank account, SBA shall obtain the most superior lien possible upon the special bank account, any property contracted for, supplies material and other property acquired with the advance payment funds.

(iii) The section 8(a) subcontractor must support each request for disbursement of advance payments by submitting to SBA the following:

(A) The original vendor invoice or original payroll record;

(B) A certified statement, dated and signed by the concern's Chief Financial Officer, attesting to the truth and accuracy of the vendor invoice, and/or the payroll records for the requested advance payment including records of direct payroll expenditures, and payroll expenditures for general and adminstrative expenses and overhead;

(C) Certification by the concern that all Federal taxes and FICA payments are current, or a copy of any agreement with the IRS providing for payment of delinquent taxes;

(D) Documentation of overhead and general and administrative rates using projected indirect costs applied to a valid base, which have been properly allocated to direct material, labor, or other direct costs.

(iv) The section 8(a) concern must, as required by IRS regulations, select a Federal Depository into which the Federal withholding and FICA payment will be made. There shall be no change of Federal Depository without obtaining the prior written consent of the SBA. A check shall be prepared for Federal taxes, concurrent with the SBA advance, based on the submitted payroll, in the name of the tax collecting agency or the Federal Depository and signed by SBA and the contractor. If the amount of a check payable to IRS is less than 25 percent of the gross payroll for that period, the concern's Chief Financial Officer shall prepare a statement certifying that the amount designated as payable to IRS or the Federal Depository is true and correct.

(2) Upon a review of all the circumstances, the Regional Administrator of SBA shall have the obligation to decide whether to approve or deny a request for advance payment and the amount thereof. This right of approval may be delegated to appropriate SBA officials within the discretion of the Administrator. The section 8(a) business concern, the bank selected pursuant to above and SBA must execute and Advance Payment Agreement

prior to the disbursement of any advance payment which shall provide for advance payments, set forth a liquidation schedule for the advance payments as well as other terms and conditions governing advance payments. Under no circumstances may a liquidation schedule be waived. However, the appropriate Regional Administrator is authorized to modify liquidation schedules. The section 8(a) concern must execute a note evidencing the full amount of the advance payment and a security agreement and/or personal guarantee by one or more of the principals of the concern as collateral for the advance payment.

(d) *Use of advance payment funds.* (1) Except for repayment to SBA in appropriate circumstances, advance payment funds many only be withdrawn from the special bank account by a section 8(a) business concern exclusively for the purpose of purchasing materials, labor, general and administrative expenses and overhead, and paying progress payments to the subcontractors of the section 8(c) concern for the performance of a specific section of the section 8(a) subcontract at issue.

(2) Under no circumstances may advance payment funds be deposited in interest-bearing accounts, certificates of deposit or other securities.

(3) Advance payment funds shall be disbursed by SBA for deposit into the special account only in such amounts necessary to pay for the immediate needs of a section 8(a) subcontract. Such disbursements shall be made as expeditiously as possible. Such immediate needs shall be documented by the small business concern and verified by SBA prior to disbursement.

(4) All payments to the section 8(a) business concern for work performed or services rendered pursuant to the subject section 8(a) subcontract shall be paid into the special bank account by the procuring agency, and shall be applied by SBA first against the balance of advance payments according to the liquidation schedule. Any amounts remaining in the special bank account may be disbursed to the section 8(a) concern, *provided, however,* that the unpaid balance on the section 8(a) subcontract is sufficient to allow the 8(a) concern to comply with its advance payment liquidation schedule.

(e) *Cancellation.* (1) SBA may determine that advance payments should be cancelled under the following circumstances:

(i) The terms and conditions of the advance payment agreement have not been adhered to by a section 8(a) small business concern.

(ii) The section 8(a) business concern's participation in the section 8(a) program has ended by expiration of the Fixed Program Participation Term and any extension, or has been suspended pursuant to § 124.113 of these regulations or has been terminated by administrative action under section 8(a)(9) of the Small Business Act, 15 U.S.C. 637(a)(9).

(2) In the event of cancellation of advance payments to a section 8(a) business concern, all previous advance payments made to that section 8(a) business concern shall become due and payable to SBA prior to the receipt of final contract payment.

§ 124.402 Business development expense.

(a) *Purpose.* Business Development Expense (BDE) funds are made available by SBA at the time of the execution of a specific section 8(a) subcontract for the purpose of assisting a section 8(a) business concern with the performance of that subcontract. The authority to approve the uses and amount of BDE rests with the Administrator who has the power to delegate the authority. An award of BDE is justified only if, prior to the execution of the related section 8(a) subcontract, SBA conducts a complete analysis of the written request and determines that the proposed BDE will promote the long term development objectives of the section 8(a) concern as described in the business plan.

(b) At the discretion of SBA, BDE funds may be added to the section 8(a) subcontract price and may be used for the following purposes and in the following order of priority.

(1) *Capital equipment.* For the purchase of capital equipment which has been determined by SBA to be essential to the section 8(a) business concern's performance of a specific sec-

tion 8(a) subcontract at a fair market price and for which acquisition cannot reasonably be made by other financing means.

(2) *Other capital improvements.* To assist in the acquisition of other necessary production/technical assets or to subsidize the cost of other capital improvements directly related to reduction of production costs, or to increase productivity and/or production capacity in connection with a specific section 8(a) subcontract. This category includes, but is not limited to, such items as quality control systems, inventory control systems, and other business systems.

(3) *Price differential.* To make up the difference between Government's established fair market price and the price required by the section 8(a) contractor to provide the product or service in connection with a specific section 8(a) subcontract. This type of BDE should be granted to a firm only one time for any specific type of requirement and only if the analysis demonstrates that the firm will be able to produce the item/service competitively in the future.

(c) BDE shall not be provided to satisfy:

(1) Price differentials for professional and nonprofessional service firms;

(2) Any contingency arising subsequent to execution of the section 8(a) subcontract for which the BDE is proposed;

(3) Cost overruns;

(4) Entertainment expenses;

(5) The cost of capital equipment and other capital improvements when one of the following conditions exists:

(i) Funds are available from outside sources to the concern, including SBA financing and the personal resources of the principal(s); or

(ii) Adequate and timely financing from outside sources is available at a reasonable rate.

(6) Costs of interest expenses to be borne by the section 8(a) concern.

(d) *Participatory BDE.* Where appropriate and feasible, section 8(a) concerns will participate to the fullest extent possible in funding the acquisiion of assets acquired with BDE unds.

(e) *Requirements.* To be eligible for business development expense funds, a section 8(a) business concern must submit a written request to the appropriate SBA Regional Administrator or his designee. The request must include detailed documentation to support the need for funds, proof that adequate financing is not available at current market rates, and such additional information as required by SBA to adequately consider the request.

(f) When BDE, including participating BDE, will be used to purchase capital equipment, the section 8(a) concern shall comply with the following requirements. The section 8(a) concern shall:

(1) Execute and record a lien on the equipment in favor of SBA. SBA will remove the lien on the assets acquired with BDE funds upon successful completion of the section 8(a) subcontract, except in the case of the firm which has outstanding obligations owed to SBA. Upon full repayment of such outstanding obligations, SBA shall release the lien.

(2) Execute a BDE agreement with SBA which among other things convenants that:

(i) The concern will use the funds exclusively for the purposes stated in the BDE approval;

(ii) The concern shall maintain records to substantiate the uses for which BDE funds have been expended; and

(iii) In the event of default on the contract to which the BDE relates, the section 8(a) concern shall be liable for repayment of the full amount of the BDE.

§ 124.403 Letter of credit.

(a) *General policy.* The letter of credit method of payment will be utilized under certain circumstances to disburse advance payments to section 8(a) business concerns performing subcontracts under the section 8(a) program when SBA has made a decision approving the use of advance payments pursuant to the requirements and conditions provided for in these regulations.

(b) *Eligibility requirements.* SBA may disburse advance payments through the letter of credit method of payment through the Federal Reserve Bank System to a section 8(a) business concern when all of the following conditions are found by SBA to exist:

(1) SBA determines that the section 8(a) business concern may be awarded more than one section 8(a) subcontract during a period of at least one year.

(2) The aggregate amount of letter of credit advance payment funds made to one section 8(a) business concern will exceed $120,000 annually.

(3) The section 8(a) business concern has submitted a schedule of its projected monthly advance requirements for section 8(a) subcontract disbursements, SBA has reviewed it, and SBA has found it to be reasonable.

(4) The section 8(a) business concern has established or agrees to establish and maintain financial records and controls which will provide for complete accountability and required reporting of program funds. These records must be made available upon request for review and audit by SBA and the General Accounting Office.

(c) *Procedures.* The procedures for the utilization of the letter of credit method of payment shall be in accord with 48 CFR § 32.406.

§ 124.501 Development assistance program.

(a) *General.* Section 7(j)(1) of the Small Business Act provides for financial assistance to public or private organizations to pay all or part of the cost of projects designed to provide technical or management assistance to individuals or enterprises eligible for assistance under sections 7(a)(11), 7(j)(10), and 8(a) of the Small Business Act. The AA/MSB-COD is responsible for coordinating and formulating policies relating to the dissemination of this assistance to small business concerns eligible for assistance under sections 7(a)(11), 7(j)(10) and 8(a) of the Small Business Act.

(b) *Services.* (1) Section 7(j)(1-2) of the Small Business Act empowers the SBA to provide through public and private organizations the management and technical assistance enumerated below to those individuals or concerns who meet the eligibility criteria contained in section 7(a)(1) and 8(a) of the Small Business Act.

(2) The SBA shall give preference to projects which promote the ownership, participation in ownership, or management of small businesses owned by low-income individuals and small businesses eligible to participate in the section 8(a) program.

(3) This assistance may include any or all of the following:

(i) Planning and research, including feasibility studies and market research;

(ii) The identification and development of new business opportunities;

(iii) The furnishing of centralized services with regard to public services and Federal Government programs including programs authorized under sections 7(a)(11), 7(j)(10) and 8(a) of the Small Business Act;

(iv) The establishment and strengthening of business service agencies, including trade associations and cooperatives;

(v) The furnishing of business counseling, management training, and legal and other related services, with special emphasis on the development of management training programs using the resources of the business community including the development of management training opportunities in existing business, and with emphasis in all cases upon providing management training of sufficient scope and duration to develop entrepreneurial and managerial self-sufficiency on the part of the individuals served.

(4) Sections 7(j)(3) and 7(j)(9) of the Small Business Act authorize SBA to

(i) Encourage the placement of subcontracts by businesses with small business concerns located in areas of high concentration of unemployed or low-income individuals, with small businesses owned by low-income individuals, and with small businesses eligible to receive contracts pursuant to section 8(a) of this Act. SBA may provide incentives and assistance to such businesses that will aid in the training and upgrading of potential subcontractors or other small business concerns eligible for assistance under sections 7(a)(11), 7(j), and 8(a) of the Small Business Act, and

(ii) Coordinate and cooperate with the heads of other Federal departments and agencies, to insure that contracts, subcontracts, and deposits made by the Federal Government or with programs aided with Federal funds are placed in such a way as to further the purposes of sections 7(a)(11), 7(j), and 8(a) of the Small Business Act.

(c) *Eligibility.* (1) Eligibility for the assistance enumerated under § 124.501(b) above shall include, but not be limited to:

(i) Businesses which qualify as small within the meaning of size standards prescribed in 13 CFR Part 121, and which are located in urban or rural areas with a high proportion of unemployed or low-income individuals, or which are owned by such low-income individuals; and

(ii) Businesses eligible to receive contracts pursuant to section 8(a) of the Small Business Act.

(d) *Delivery of services.* (1) The financial assistance authorized for projects under paragraph (b) of this section includes assistance advanced by grant, cooperative agreement, or contract.

(2) To the extent feasible, services available under paragraph (b) of this section shall be provided in a location which is easily accessible to the individuals and small business concerns served.

(e) *Coordination and cooperation with other government agencies.* (1) The AA/MSB-COD may utilize the resources of other agencies and departments whenever practicable which can directly or indirectly support or augment the purposes of sections 7(a)(11), 7(j) and 8(a) of the Small Business Act.

(2) The AA/MSB-COD shall enter into agreements with Federal agencies and departments to further effective sections 7(a)(11), 7(j) and 8(a) of the Small Business Act.

(3) The AA/MSB-COD shall encourage the placement of deposits made by the Federal Government, or by programs aided with Federal funds, in such a way as to further the purposes of section 7(a)(11), 7(j) and 8(a) of the Small Business Act.

§ 124.502 Small Business and Capital Ownership Development program.

(a) *General.* Section 7(j)(10) of the Small Business Act establishes a Small Business and Capital Ownership Development program which shall provide additional assistance exclusively for small business concerns eligible to receive contracts pursuant to section 8(a) of the Small Business Act. The management of the Capital Ownership Development program is vested in the AA/MSB-COD who is responsible for the oversight of the program and activities set forth in this part of these regulations. The development assistance described below shall be provided exclusively to those small business concerns eligible to receive contracts pursuant to section 8(a) of the Small Business Act. Such small business concerns shall be participants in the Small Business Capital Ownership Development program. This program shall:

(1) Assist shall business concerns participating in the program to develop comprehensive business plans with specific business targets, objects, and goals;

(2) Provide for such other nonfinancial services as deemed necessary for the establishment, preservation, and growth of small business concerns participating in the program, including but not limited to:

(i) Loan packaging,

(ii) Financial counseling,

(iii) Accounting and bookkeeping assistance,

(iv) Marketing assistance, and

(v) Management asssistance;

(3) Assist small business concerns participating in the program to obtain equity and debt financing;

(4) Establish regular performance monitoring and reporting systems for small business concerns participating in the program to assure compliance with their business plans;

(5) Analyze and report the causes of success and failure of small business concerns participating in the program; and

(6) Provide assistance necessary to help small business concerns participating in the program to procure

surety bonds. Such assistance shall include, but not be limited to:

(i) The preparation of surety bond participation forms;

(ii) Special management and technical assistance designed to meet the specific needs of small business concerns participating in the program and which have received or are applying to receive a surety bond, and

(iii) Preparation of all forms necessary to receive a surety bond guarantee form the SBA pursuant to Title IV, Part B of the Small Business Investment Act of 1958.

§ 124.503 Compliance with the Paperwork Reduction Act of 1980.

(a) In compliance with the Paperwork Reduction Act of 1980 (Title 44, U.S.C., Chapter 35) and its implementing regulations, the recordkeeping or reporting requirements and forms appearing in the following sections of this part have been approved by the Office of Management and Budget (OMB) under number 3245-0015:

124.105(b)
124.106(b)
124.106(b)(1)
124.106(b)(2)
124.106(b)(3)
124.20
124.204
124.205
124.403(b)(4)
124.502(a)(1)
124.502(a)(6)

(b) The recordkeeping or reporting requirements and forms appearing in the following sections of this final rule have also been approved by OMB:

Section	OMB Approval No.
124.103(c)	3245-0145
124.103(e)	3245-0145
124.111(c)	3245-0147
124.112(a)(7)	3245-0205
124.112(a)(17)	3245-0146
124.205	3245-0015
124.206	3245-0143
124.401(c)(1)(i), 124.401(c)(1)(iii) and 124.403(b)(3).	3245-0148
124.402(e)	3245-0149
124.112(a)(6), 124.205 (financial statements) and 124.502(a)(4).	3245-0151]

PART 125—PROCUREMENT ASSISTANCE

Sec.

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AUTHORITY: Sec. 610(a) of Pub. L. 100-202, (101 Stat. ——), secs. 5(b)(6), 8 and 15 of the Small Business Act, 72 Stat. 384, as amended (15 U.S.C. 631, *et seq.*), 31 U.S.C. 9701, 9702 (96 Stat. 1051).

SOURCE: 44 FR 60274, Oct. 19, 1979, unless otherwise noted.

§ 125.1 Policy.

It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency. The Small Business Administration will aid, counsel and assist, insofar as is possible, small business concerns to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including but not limited to contracts or subcontracts for equipment, materials and supplies; maintenance, repair, construction and architect-engineer services; research, development, test and evaluation) are placed with small business enterprises; to insure that a fair proportion of the total sales of Government property be made to such enterprises; and to maintain and strengthen the overall economy, well-being and security of the Nation.

§ 125.2 Definitions.

For purposes of this part:

(a) "Administrator" means the Administrator of the Small Business Administration.

(b) "SBA" means the Small Business Administration.

(c) "Small Business" means a business which qualifies as a small business under the small business size standards requirements, Part 121 of this chapter and includes small concerns owned and controlled by socially and economically disadvantaged individuals under the definition thereof in Part 124 of this chapter.

(d) The terms "procurement" and "acquisition" are used interchangeably throughout.

(e) The term "Federal agency" as used herein does not include the United States Postal Service or the General Accounting Office.

(f) The term "Government procurement contract" means any contract for the procurement of any goods or services by any Federal agency.

PROCUREMENT ASSISTANCE

§ 125.3 Introduction.

The regulations in this part implement the procurement assistance programs of the Small Business Administration. The Office of the Associate Administrator for Procurement Assistance establishes SBA policy for, and directs the nationwide operation of (currently) five major programs: Certificate of Competency; Prime Contracts Assistance; Property Sales Assistance; Subcontracting Assistance; and Technology Assistance. The five programs are involved in aiding small business firms to obtain a fair share of Federal Government procurement contracts and subcontracts, and Federal Government resources.

§ 125.4 Statutory provisions summarized.

SBA procurement assistance is authorized, as of the date of this regulation, under sections 8(b) (15 U.S.C. 637(b)), 8(d) (15 U.S.C. 637(d)), 9 (15 U.S.C. 638), 11 (15 U.S.C. 640), 14 (14 U.S.C. 643), 15 (15 U.S.C. 644), 222 (41 U.S.C. 405(a)) (40 U.S.C. 401 note), and 223(a) (15 U.S.C. 637(b)) of the Small Business Act, as amended.

(a) 8(b) authorizes the SBA—

(1) To provide procurement and technical assistance to small business concerns, by advising and counseling on matters in connection with Government procurement (including certain Federal prime contractor procurement) and property disposal and on policies, principles, and practices of Federal Government acquisition;

(2) To obtain from any Federal department, establishment or agency engaged in procurement or in the financing of procurement or production, or in the disposal of Federal property, such reports concerning the letting of and compliance with contracts and subcontracts, solicitations of bids or proposals, time of sale, or otherwise as it may deem appropriate in carrying out its functions under the Small Business Act, as amended;

(3) To certify to Government procurement officers, and officers engaged in the sale and disposal of Federal property with respect to all elements of responsibility including but not limited to the competency, capability, capacity, credit, integrity, perseverance and tenacity, of any small business concern or group or such concerns to perform a specific Government contract;

(4) To review a Government procurement officer's finding that an otherwise qualified small business concern may be ineligible due to the provisions of section 35(a) of Title 41, United States Code (the Walsh-Healey Public Contracts Act);

(5) To make a complete inventory of all productive facilities of small business concerns or to arrange for such inventory to be made by any other Governmental agency which has the facilities;

(6) To assist small business concerns to obtain Government contracts for research and development; to assist small business concerns to obtain the benefits of research and development performed under Government contracts or at Government expense; to provide technical assistance to small business concerns to accomplish this purpose; and to insure that a fair proportion of Government contracts for research and development be placed with small business concerns;

(b) Section 8(d) authorizes the SBA—

(1) To review solicitations requiring the submission of subcontracting plans to determine the maximum practicable opportunity for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate as subcontractors in the performance of any contract resulting from any solicitation, and submit findings which shall be advisory in nature to the appropriate Federal agency;

(2) To assist Federal agencies and businesses in complying with their subcontracting responsibilities (sec. 8(d) of the Small Business Act, as amended), including the formulation of subcontracting plans for contracts to be let pursuant to the negotiated method of procurement;

(3) To obtain reports from Federal prime contractors and subcontractors demonstrating the extent of compliance with the contract provisions for small and disadvantaged subcontracting;

(4) To evaluate compliance with subcontracting plans, either on a contract by contract basis or in the case of contractors having multiple contracts, on an aggregate basis;

(c) Section 8(d) provides—

(1) That each Government procurement prime contract and any amendment or modification thereto, and each subcontract let thereunder, which may exceed $1,000,000 in the case of construction projects or $500,000 in every other case, except those which (i) will be performed entirely outside of any State, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; (ii) are for personal services; or (iii) are awarded to small business concerns; shall contain a mandatory provision for timely submission by the apparent successful bidder or offeror of an acceptable subcontracting plan that reflects maximum practicable opportunities for participation by and utilization of, to the fullest extent consistent with efficient contract performance, small and small disadvantaged business concerns to perform subcontracts to be let thereunder;

(2) That any contractor or subcontractor who fails to comply in good faith with the mandatory subcontracting provisions of a Government procurement contract or subcontract thereunder shall be found in material breach of such contract or subcontract;

(d) Section 9 authorizes the SBA—

(1) To consult with and make recommendations to all Government agencies for the purpose of providing small business concerns assistance, including technical assistance, to obtain (i) Government contracts for research and development, and (ii) the benefits of research and development performed under Government contracts or at Government expense; and to conduct studies, with the cooperation of Government agencies, of Government procurement or funding of research and development effort;

(2) To assist and encourage small business concerns to jointly undertake programs for research and development through such corporate or other mechanism appropriate for the purpose and to approve, after consultation with the Chairman of the Federal Trade Commission and with prior authorization of the Attorney General, any agreement between small business firms providing for such a joint program.

(e) Section 11 provides—

(1) That small business concerns may be authorized and encouraged, if found to be in the public interest as contributing to the national defense, to enter into voluntary agreements and programs to form Defense Production Pools for the purpose of furthering the objectives of the Small Business Act;

(f) Section 14 authorizes the SBA—

(1) To make a fair charge for the use of Government-owned property, as and to the fullest extent it deems practicable, and to make and let contracts on a basis that will result in recovery of the direct costs which it incurs in so doing;

(g) Section 15 provides—

(1) That small business concerns shall be awarded any Government procurement contract, or any part there-

of, and any contract for the sale of Government property, as to which it is determined by the SBA and the procurement or disposal contracting agency to be in the interest of (i) maintaining or mobilizing the Nation's full productive capacity, (ii) war or national defense programs, (iii) assuring that a fair proportion of the total purchases and contracts for property and services for the Government are placed with small business concerns, or (iv) assuring that a fair proportion of the total sales of Government property be made to small business concerns; and, that any failure of the SBA and contracting agency to reach agreement shall cause the SBA Administrator to submit the matter to the Secretary or head of the appropriate department or agency for determination;

(2) That the head of each Federal agency will provide the SBA a report at the conclusion of each fiscal year on the extent of participation by small business concerns, and by small disadvantaged business concerns in procurement contracts, which report shall contain the rationale and justification for any failure by the Federal agency to meet established goals, for review, consolidation and submission to the Select Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives;

(3) That separate goals for the participation by small business concerns and small disadvantaged business in Government procurement contracts and subcontracts thereunder shall be established annually by the head of each Federal agency following consultation with the SBA, and that the Administrator of the Office of Federal Procurement Policy shall establish the goal whenever there is disagreement between a Federal agency head and the SBA;

(4) That exclusive small business set-asides are authorized for government procurements of architect and engineering services, and research, development, test and evaluation;

(5) That each Government contract for procurement of goods or services which has an anticipated value of less than $10,000 and is subject to small purchase procedures shall be set aside exclusively for small business concerns unless the contracting officer is unable to obtain competitive offers from at least two small business concerns;

(6) That a method of prompt payment to contractors which also minimizes paperwork shall be employed whenever circumstances permit for Government procurement contracts effected under small purchase procedures;

(7) That an 'Office of Small and Disadvantaged Business Utilization' shall be established in each Federal agency having procurement powers, and that management of such office shall be vested in an employee of each such agency who shall be known as the 'Director of Small and Disadvantaged Business Utilization' and who shall—

(i) Be appointed by the head of such agency, and be responsible only to, and report directly to, the head of such agency or to his deputy,

(ii) Be responsible for implementation and execution of the Federal agency's functions and duties under sections 8 and 15 of the Small Business Act, as amended, and have supervisory authority over such agency personnel to the extent of their functions and duties thereunder,

(iii) Cooperate and consult on a regular basis with the SBA relative to carrying out the Federal agency's functions and duties under sections 8 and 15 of the Small Business Act, as amended, and

(iv) Assign to each acquisition activity within such Federal agency, to which the SBA has a procurement center representative assigned, a small business technical adviser (A) who shall be a full-time employee of the activity and well qualified, technically trained and familiar with the supplies or services purchased at the activity, and (B) whose principal duty shall be to assist the assigned SBA procurement center representative in carrying out his duties and functions relating to sections 8 and 15 of the Small Business Act, as amended;

(h) Section 222 of Pub. L. 95-507 provides—

(1) That, in formulating Federal procurement procedures which govern the acquisition process for all Government procurement requirements, the

Administrator of the Office of Federal Procurement Policy shall, in consultation with the SBA, conduct analyses of the impact on small business concerns;

(2) That the forthcoming Federal Acquisition Regulation directed by Pub. L. 93-400 incorporate revised Government procurement regulations which provide for simplified bidding, contract administration, and contract performance procedures for small business concerns;

(i) Section 223(a) of Pub. L. 95-507 provides—

(1) That any small business concern shall be provided upon its request, in connection with any Government procurement contract to be let by any Federal agency, except in the case of contract (i) which will be performed entirely outside any State, territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico, or (ii) which is for personal services—

(A) The applicable bid set and specifications,

(B) The name and telephone number of an employee of such agency to answer questions with respect to such contract, and

(C) Adequate citations to each major Federal law or agency rule with which small business concerns must comply in performing such contract.

OFFICE OF PROCUREMENT AND TECHNICAL ASSISTANCE

§ 125.5 Certificate of competency program.

The Certificate of Competency (COC) Program is authorized under section 8(b)(7) of the Small Business Act as amended. A COC is a written instrument issued by SBA to a Government contracting officer, certifying that a small concern (or a group of such concerns) named therein possesses a responsibility and/or eligibility to perform a specific Government procurement (or sale) contract.

(a) To be eligible for the program, a firm must be:

(1) A "small business concern" using the size standard as of the date of the determination and the SIC Code contained in the solicitation; or

(2) A "group of such concerns" in the form of a small business pool approved under the Small Business Act.

(b) A manufacturing, construction, or service concern shall not be eligible for a Certificate unless it performs a significant portion of the contract with its own facilities and personnel.

(c) A non-manufacturing concern which submits a bid or offer on a set-aside contract shall not be eligible for a COC unless the end items to be furnished under the contract will be manufactured by a small business concern in the United States; when an unrestricted procurement or a procurement utilizing small purchase procedures, an otherwise qualified non-manufacturer may supply any domestically produced or manufactured product. The responsibility of the small nonmanufacturer is certified, not the large manufacturer. In the event of a tie bid, preference shall be given to the concern supplying the product of a small business. Tool kit assemblers are required to provide items manufactured by small business concerns amounting to more than 50 percent of the kit material value.

(d) Government procurement officers, and officers engaged in the sale and disposal of Federal property, upon determining and documenting that a small business lacks certain elements of responsibility, including but not limited to competency, capability, capacity, credit, integrity, perseverance, and tenacity, shall notify SBA of such determination. Award is withheld by the contracting officer for a period up to 15 working days following the date of receipt by SBA of notice of such determination (with appropriate documentation) in order to permit SBA to investigate and certify as to the bidder's responsibility.

(e) Upon receipt of this notification, SBA personnel then contact the company concerned to inform it of the impending decision, and to offer the opportunity to apply to SBA for a Certificate. A concern wishing to apply advises the SBA regional office for the geographic region within which the concern is located. Upon timely receipt of required documentation, SBA personnel may be sent to the firm to review the responsibility of the applicant and make recommendations to the Regional Administrator.

(f) If the Regional Office's decision is negative, the COC is denied and both the firm and procuring agency are notified. If the Regional Office's decision is affirmative and the dollar value of the procurement is within the region's delegated authority, the Regional Office issues a Certificate. Contracting officers will be informed in advance of issuing. For procurements in excess of the region's delegated authority, if the Regional Office recommends issuance of the Certificate, the Associate Administrator for Procurement Assistance, SBA Central Office, causes a review to be made and either ssues or denies the Certificate. If the Associate Administrator's decision is negative, the firm and procuring activ- ty are so informed; if affirmative, a etter, certifying the responsibility of he firm as to the elements of responsibility referred (the COC) is sent to he procuring activity and the applicant informed of such issuance by the egional office.

(g) The notification to an unsuccess- ul applicant concern will briefly state he reason for denial and inform the pplicant that a meeting may be re- uested with the appropriate SBA re- ional personnel to discuss the reasons or denial. Upon receipt of a request or such a meeting, the appropriate re- ional personnel will confer with the pplicant and explain fully the rea- ons for SBA's action. However, such onference will be for the sole purpose f enabling the applicant to improve r correct deficiencies and will not onstitute a basis for reopening the ase in which the Certificate was enied.

(h) After a Certificate is issued and he contract is let to the applicant, BA keeps a close watch on the ogress. Progress reviews are made by BA field personnel who report to the entral Office on the status of the ntract. In this way, SBA assistance constantly available to the contrac- r.

(i) A Government procurement offi- r documenting that a small concern ineligible due to the provisions of ction 35(a) of Title 41, U.S.C. (the alsh-Healey Public Contracts Act) must notify SBA of such determination. SBA shall either certify that the concern is eligible for the specific contract or concur with the finding of ineligibility and refer the matter to the Secretary of Labor for final disposition.

(j) By terms of the Small Business Act, as amended, the COC is conclusive as to responsibility. Contracting officers are directed to award a contract without requiring the firm to meet any other requirement with respect to responsibility and eligibility.

[47 FR 34973, Aug. 12, 1982, as amended at 50 FR 11994, Mar. 27, 1985; 50 FR 52437, Dec. 24, 1985; 51 FR 44037, Dec. 8, 1986]

§ 125.6 Government prime contracts assistance.

In accordance with specific provisions of the Small Business Act, as amended, the Small Business Administration develops, establishes and implements programs to increase the share of Government prime contracts awarded to small business concerns, including small business concerns owned and controlled by socially and economically disadvantaged individuals; to assist those small business firms having procurement and contract administration problems involving the Federal acquisition agencies; and to assist such concerns to form small business production or research and development pools. Federal acquisition regulations and instructions serve as the procedural vehicle for implementation of the Government's small and small disadvantaged business acquisition policy as declared in the Small Business Act. The effort to increase prime contract awards to small and small disadvantaged business concerns is concentrated in the early stages of the procurement cycle. The SBA has procurement center representatives (PCRs) stationed at Federal installations which have major buying programs. SBA PCRs accomplish their mission in coordination with small business specialists, and with small business technical advisers assigned to Federal acquisition activities, whose principal duties include responsibility for assisting SBA PCRs in the performance of all prime contracting assistance duties and functions emanating from the Small Business Act, as amended. The SBA Government Prime Contracts Assistance program is designed to cause the PCRs to carry out the following functions in connection with the acquisition of Federal procurement requirements.

(a) Represent the SBA in all Prime Contracts Assistance matters at Federal acquisition installations;

(b) Screen proposed Government procurements which the acquisition agencies' contracting officials and small business specialists or small business technical advisers do not recommend, including those recommended initially but later withdrawn, for small business set-asides, awards to SBA under section 8(a), and small business labor surplus area set-asides, as appropriate, for possible set-aside action, either partial or total, by the SBA. In appropriate instances, appeals SBA-initiated set-asides denied by the heads of acquisition activities to the Secretary of the department or head of the agency through the Associate Administrator for Procurement Assistance (AA/PA), SBA Central Office;

(c) Represent the entire small business community to the Federal acquisition agencies and initiates activities necessary to provide an optimum climate for participation in the Government's contracting system;

(d) Review regulations and instructions of Federal acquisition agencies and activities for potential impact on small and small disadvantaged business concerns involved in Government procurement, and make recommendations through the AA/PA for resolutions of provisions deemed prejudicial to small or small disadvantaged business concerns at the highest necessary levels of the acquisition agencies;

(e) Review and evaluate the small business programs of individual Federal acquisition activities, and make recommendations either directly to the activities or through the Office of Procurement and Technical Assistance, SBA Central Office, to the Federal department or agency, which, when implemented, improve program effectiveness and results;

(f) Recommend potential small and small disadvantaged business sources for the contracting agencies' use in their procurement solicitations;

(g) Assist the acquisition agencies and activities in establishment of goals for awards to small business concerns and to small business concerns owned and controlled by socially and economically disadvantaged individuals, and periodically report progress toward attainment thereof to the AA/PA, SBA Central Office;

(h) Sponsor and participate in conferences and training courses, public and Government, designed to provide information and counsel to increase small and small disadvantaged business participation in Government procurement;

(i) Establish local operating procedures at and in conjunction with individual acquisition activities, within policy guidelines and direction of the AA/PA, SBA Central Office, designed to efficiently and effectively utilize Federal agency small business technical advisers in the discharge of their statutory responsibility and performance of their principal duty to assist SBA PCRs in achieving the congressional objective of providing maximum procurement opportunities for small and small disadvantaged business concerns;

(j) Advise, counsel and assist small and small disadvantaged business concerns which are having procurement or contracting problems with an acquisition or contract administration activity;

(k) Advise and guide small and small disadvantaged businesses in doing business with the Government;

(l) Counsel small and small disadvantaged businesses on how to prepare and submit bids and proposals, and obtain prime contracts and subcontracts;

(m) Assist small and small disadvantaged businesses in getting their names placed on bidders' lists, and in obtaining drawings and specifications for proposed purchases, and offer related services, which include supplying leads on research and development projects;

(n) Review terms, conditions and specifications of solicitations for bid or proposal offerings to ascertain, insofar as possible, that maximum contract and subcontract opportunities are afforded to small and small disadvantaged business concerns as required by the Small Business Act, as amended;

(o) Coordinate, as possible, with contracting officials in determining acceptability of proposed subcontracting plans to provide maximum practicable opportunities for small and small disadvantaged businesses; and advise the head of the acquisition activity and AA/PA, SBA Central Office, in cases of disagreement with contracting officials.

(p) Identify procurement requirements for potential contracting action by officials of the Associate Administrator for Minority Small Business and Capital Ownership Development as a result of screening Government procurement requisitions.

§ 125.7 Defense production pools.

(a) Defense Production Pools, which involves the voluntary pooling of small business concerns, are authorized for the purpose of furthering the objectives of the Small Business Act. Such pools, if their pooling agreements are approved, enjoy certain immunities from the antitrust laws and the Federal Trade Commission.

(b) An approved pool is treated the same as any other bidder or contractor for procurement purposes. A member of a pool is not precluded from submitting bids or proposals on other procurements but his bid or proposal will not be considered if he has participated in a bid or proposal submitted by his pool. However, the existence of a production pool agreeement may affect the responsibility of a pool member in the consideration of his individual bid or proposal.

(c) To qualify as a pool, the group members must:

(1) Associate for the purpose of procuring contracts—or to effectuate the purposes of the Small Business Act;

(2) Enter into a pool agreement controlling their organization, relationship and procedures;

(3) Secure approval under either the Defense Production Act or the Small Business Act.

(d) Bids or proposals of an approved pool may be submitted by the pool in ts own name or by an individual member if the bid or proposal specifies that it is made on behalf of the pool. If a bid is not so submitted, it is not eligible for award. Contracting officers may reply upon a copy of the SBA notification of approval as proof of such approval.

(e) Unincorporated pools, before award of a contract, must furnish a certified copy of a Power of Attorney from each member who is to participate in the performance of the contract. The Power of Attorney must designate an agent to execute the bid, proposal, or contract to the member.

(f) Any group of small business concerns which wishes to form a pool should request the SBA district offices to arrange a meeting. The names and addresses of all such concerns which are considering participation in the pool shall be provided to SBA along with information as to the kinds of business in which they are engaged, and the name of a representative of each participant who should be invited to the initial meeting to be held at the SBA district office. The purpose of the meeting is to explore, with the SBA representative, the desirability of forming a pool, the proposed plan of operation, and related matters.

§ 125.8 Government property sales assistance program.

The Property Sales Assistance Program is authorized under sections 2(a), 8(b), 10(f) and 15 of the Small Business Act.

(a) Pursuant to the statutory requirements of the Small Business Act, the Small Business Administration is charged to insure that small business concerns obtain a fair share of all Federal real and personal property which qualifies for sale or other competitive disposal action. The basic purpose of the program is:

(1) To insure small business concerns obtain a fair share of Government property sales/leases to include, where necessary, small business set-asides.

(2) To provide aid, counsel and other available assistance to small business concerns on all matters pertaining to Government sales/leases.

(b) The Property Sales Assistance Program and its implementation were designed to assure small business the opportunity to bid competitively on Government property being sold or leased. Interagency agreements have been formalized with the Departments of Agriculture, Interior and Defense, and the General Services Administration to provide for cooperative effort in setting aside certain sales of Government property for exclusive bidding of small business concerns.

(c) Specific areas of Government property included in the Property Sales Assistance Program are:

(1) Timber and related forest products

(2) Strategic material from national stockpiles

(3) Royalty oil and leases involving rights to minerals, oil, gas, vegetation

(4) Excess and surplus real and personal property primarily from GSA and DOD sources.

(d) The Property Sales Assistance Program is directed by Central Office staff management and assigned industrial specialists with post of duty at key geographic locations throughout the United States. SBA property sales industrial specialists are charged with the specific, primary responsibility to monitor all Federal timber sales and to require, if necessary, joint set-asides as proposed timber sales to insure a "fair proportion" of sales are offered to small businesses. Specific procedures for determining a "fair proportion" are in accordance with appropriate interagency agreements. Guidelines pertaining to timber sales are further outlined in § 121.3-9 of this chapter. To insure that set-aside timber is processed by small business the provisions of § 121.3-9(b) of this chapter require that the purchasers of preferential Government timber sales agree to the following:

(1) If the timber is being purchased for resale, that it will not sell more than 30 percent (50 percent in Alaska) of the preferential timber to concerns not meeting SBA's small business size standard; and

(2) If the timber is being purchased for manufacture, that it will do so with its own facilities or those of concerns that qualify as small business.

(e) At the time the contract for the sale of Federal timber is executed the selling agency requires execution of SBA Form 723, "Small Business Certification Required on all Preferential Sales of Set-Aside Timber," which becomes a part of the sales contract.

(f) A concern that violates the provisions of a preferential setaside sale agreement may be subject to:

(1) Cancellation of timber sale contract or contracts that have been breached;

(2) Debarment from participating in future Federal timber sales;

(3) Disqualification from participating in future Federal timber sales set aside for small business; and

(4) Criminal proceedings.

(g) When it is brought to the attention of SBA that a purchaser of set-aside timber or logs has appeared to violate the 30 percent (50 percent in Alaska) clause in the size standard for disposal of timber or sawlogs, the industrial specialist, when necessary, shall investigate the circumstances immediately. The purpose of the investigation shall be to ascertain whether said person or concern sold set-aside logs to other than small business in excess of the 30 percent allowable under the size standard regulations.

(h) The program's past efforts have stressed small business involvement primarily in the timber and royalty oil areas. Under the expanded, more fully developed Property Sales Assistance Program, increased emphasis is being placed on the following key areas:

(1) Closer definition of small business constituency which qualify for assistance, and establishment of an inventory of related firms and their capabilities;

(2) Expanded negotiations with various Federal departments and agencies involved to establish specific small business set-aside programs, and to develop mutual operating procedures as necessary to monitor setaside implementation and progress; and

(3) Increased development of energy information relating to mineral leasing and set-asides and access thereto as required for counseling, programming and other assistance to small concerns involved or contemplating involvement in the energy field.

§ 125.9 Subcontracting assistance program.

The Subcontracting Assistance Program is authorized under sections 2(a), 8(b)(2), 8(b)(3), 8(b)(5), 8(c), 8(d)(1) through 8(d)(11), and 10(f) of the Small Business Act, as amended.

(a) Pursuant to statutory authorities and requirements of the Small Business Act, as amended, it is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals, shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency. Participation in performance is defined to mean subcontracted goods or services under Federal agency prime contracts.

(b) The Small Business Administration has subcontract specialists throughout the Nation who may assist small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals in subcontracing opportunities. Federal prime contracts in excess of $10,000 shall contain the clause entitled "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals."

(c) Federal agency prime contracts in excess of $1,000,000 for construction and $500,000 for all others which offer subcontracting possibilities must contain a subcontracting plan. Small Business prime contractors are excluded. Each subcontracting plan required shall include:

(1) Percentage goals (expressed in terms of total planned subcontracting) for the utilization as subcontractors of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals;

(2) The name of an individual within the employ of the offeror or bidder who will administer the subcontracting program of the offeror or bidder and a description of the duties of such individual;

(3) A description of the efforts the offeror or bidder will take to assure that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals will have an equitable opportunity to compete for subcontracts;

(4) Assurances that the offeror or bidder will include the clause entitled "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals" in all subcontracts which offer further subcontracting opportunities, and that the offeror or bidder will require all subcontractors (except small business concerns) who receive subcontracts in excess of $1,000,000, in the case of a contract for construction of any public facility, or in excess of $500,000 in the case of all other contracts, to adopt a plan meeting the basic requirements of the prime contractor's subcontracting plan;

(5) Assurances that the offeror or bidder will submit such periodic reports and cooperate in any studies or surveys as may be required by the Federal agency or the Small Business Administration in order to determine the extent of compliance by the offeror or bidder with the subcontracting plan; and

(6) A recitation of the types of records the successful offeror or bidder will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in this plan, including the establishment of source lists of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals; and efforts to identify and award subcontracts to such small business concerns.

(d) The failure of contractor or subcontractor to comply in good faith with the clause entitled "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals" or any required subcontracting plan in its contract or subcontract shall be a material breach of such contract or subcontract.

(e) The Small Business Administration is authorized to assist Federal agencies and businesses in complying with their responsibilities under subcontracting plans. The SBA may review any solicitation for any contract to be let, which would require a subcontracting plan, to determine the maximum practicable opportunity for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate as subcontractors in the performance of any contract resulting from any solicitation, and submit its findings, which shall be advisory in nature, to the appropriate Federal agency.

(f) The Small Business Administration will evaluate compliance with subcontracting plans, either on a contract-by-contract basis, or in the case of contractors having multiple contracts on an aggregate basis. In the case of aggregate evaluation of contract plans, a statistical sampling of contracts will be performed to determine compliance or non-compliance. All cases of non-compliance will be referred by SBA regional offices with recommendations for Central Office final decision. Evaluation for compliance will be based upon the complete terms of the contract subcontracting plan. Due to the length of the contract, performance periods and the point of evaluations, compliance or non-compliance may either be interim or final.

(g) At the conclusion of each fiscal year, SBA shall submit to the Senate Select Committee on Small Business and the Committee on Small Business, House of Representatives, a report on subcontracting plans found acceptable by any Federal agency which SBA determines do not contain maximum practicable opportunities to participate in the performance of the contract. In addition, the report will furnish information concerning subcontracting plans found to be in non-compliance.

(h) *Program Operation.* To carry out the Subcontracting Assistance Program, SBA subcontracting specialists are located in regional and district offices throughout the Nation.

(1) Program assistance directly available to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals from SBA personnel is as follows:

(i) Counseling representatives of firms interested in and capable of supplying Government procurement requirements on a subcontract basis;

(ii) Information and assistance on how to develop subcontract opportunities, and in obtaining currently available projects;

(iii) Information concerning subcontract opportunities for selected items, equipment and services being procured by the Government through large business prime contractors and major subcontractors;

(iv) Information and assistance on qualifications required to become eligible for inclusion on potential source listings of large business firms for future subcontract requirements;

(v) Names, addresses and telephone numbers of large business procurement representatives.

(2) SBA subcontract specialists perform the following additional duties:

(i) Assist large business, Government prime contractors and subcontractors, if requested and to the extent of available resources, in the compliance and formulation of contractually required subcontracting plans through the furnishing of potential sources;

(ii) Review subcontracting plans submitted by large business firms to Government contracting officials for approval and inclusion in major prime contracts and subcontracts;

(iii) Evaluate compliance by large business concerns with subcontracting plans incorporated into and made a material part of major prime contracts and subcontracts;

(iv) Evaluation of compliance by all concerns in their adherence to the clause entitled "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals";

(v) Recommend potential small and disadvantaged business sources to large business firms and to Government officials for performance of subcontract requirements under major Government contracts and subcontracts;

(vi) Maintain liaison with and visit large business Government prime contractors and subcontractors to assist, where requested and possible with available resources, in long term procurement plans for the purpose of encouraging increased utilization of small and disadvantaged business concerns as subcontractors;

(vii) Review and evaluate subcontracting regulations, procedures, policies, and instructions for impact on small and disadvantaged business;

(viii) Participate in conferences and training courses, public and Government, which provide information and counsel directed at increased small and disadvantaged business participation in subcontracting for Federal procurement requirement.

(3) The Associate Administrator for Procurement Assistance monitors performance, evaluates effectiveness and issues directives to implement the Subcontracting Assistance Program field operations. Management of the program is accomplished through:

(i) Establishment of program policy and procedural guidance and direction of SBA subcontracting specialists for daily interface with Government and industry officials at the field level to accomplish program objectives;

(ii) Studies and surveys conducted of the methods and practices employed by large business Government prime contractors and subcontractors;

(iii) Review and analysis of subcontracting plan compliance evaluation reports developed by SBA subcontracting specialists and reported to the Associate Administrator for Procurement Assistance; and

(iv) Compile the required reports to Congress.

[44 FR 60274, Oct. 19, 1979, as amended at 52 FR 48392, Dec. 22, 1987]

§ 125.10 Procurement Automated Source System (PASS).

Procurement Automated Source System. The SBA maintains an active Procurement Automated Source System (PASS) the primary basis for ecommending potential small business concerns and small business conerns owned and controlled by socially nd economically disadvantaged indiiduals as sources for both prime and subcontracting. The PASS is a nationwide computerized storage and retrieval bank.

(a) *Inclusion in PASS.* Concerns desirous of being included in the PASS should obtain SBA Form 1167, "PASS Company Profile," from the nearest SBA branch, district, or regional office. Instructions for filing are conveniently printed on Form 1167. If assistance should be required, it can be obtained from SBA field offices. The computerized inventory of small and disadvantaged business concerns is used to make referrals for procurements to assist those concerns in being placed on appropriate bidders' lists and for mobilization purposes, if required. Potential procurement opportunities may be local or nationwide. Once registered in the system, the company must update its data once a year to remain in the system. Potential sources may be obtained by small and large business and Government agencies.

(b) *Access to PASS.* Government agencies and nongovernmental organizations that provide substantial prime contracting and/or subcontracting opportunities to small business firms may be provided direct access to PASS if they so desire. All those with direct access to PASS (Pass users) will receive an identification number (PASS ID) and will be charged $24 per hour for PASS usage. Each fraction of an hour over and above the first hour will be charged on a pro rata basis. All users will be billed quarterly, and all fees will be paid directly to the private contractor selected by SBA to operate PASS. The contractor will bill SBA on a monthly basis for the operation of PASS in accordance with the current contract provisions minus any fees it collects from non-SBA users. Each PASS ID entitles a direct access user to two PASS User Guides at no charge. Additional copies of the User Guides and copies for anyone without a PASS ID can be purchased from SBA or the contractor for $25 each. The on-line usage fee, User Guide fee and any other related fee may be changed by SBA from time to time as required to reflect increased costs. Any fee change will be effective upon publication of a notice in the FEDERAL REGISTER.

[44 FR 60274, Oct. 19, 1979. Redesignated and amended at 52 FR 48392, Dec. 22, 1987; 53 FR 4009, Feb. 11, 1988]

§ 125.11 Technology assistance program.

(a) Section 9(a) of the Small Business Act states: "Research and Development are major factors in the growth and progress of industry and the national economy. The expense of carrying on research and development programs is beyond the means of many small business concerns, and such concerns are handicapped in obtaining the benefits of research and development programs conducted at government expense. These small business concerns are thereby placed at a competitive disadvantage. This weakens the competitive free enterprise system and prevents the orderly development of the national economy. It is the policy of the Congress that assistance be given to small business concerns to enable them to undertake and to obtain the benefits of research and development in order to maintain and strengthen the competitive free enterprise system and the national economy."

(b) Section 9(b) states: "It shall be the duty of the Administration (SBA), and it is hereby empowered—

(1) To assist small business concerns to obtain Government contracts for research and development;

(2) To assist small business concerns to obtain the benefits of research and development performed under Government contracts or at government expense; and

(3) To provide technical assistance to small business concerns to accomplish the purposes of this section.

(c) Section 9(c) states: "The Administration is authorized to consult and cooperate with all Government agencies and to make studies and recommendations to such agencies, and such agencies are authorized and directed to cooperate with the Administration in order to carry out and to accomplish the purposes of this section."

(d) *Research and Development (R&D) Procurement Assistance.* (1) SBA will identify and register the capabilities of small R&D firms interested in Government contract opportunities. The procedure for cataloging the pertinent information on these firms will be through registration in the PASS. PASS is a computerized system designed to be instantaneously responsive to the requests of government agencies for the profiles of small firms that would be potential bidders on Government contracting opportunities. SBA will publish an annual directory of R&D firms contained in the PASS, and make appropriate distribution of this directory. SBA will periodically convene conferences with small R&D firms and other Federal agencies for the purpose of increasing the share of Government R&D contracts awarded to small business.

(2) *Procedure.* Small business concerns desiring to register in the PASS program should contact the nearest SBA field office and request a PASS Company Profile Form. The completed profile should be forwarded to the cognizant SBA regional office as described in the registration instructions. Registrations in the PASS program is a no-charge service for participating firms.

(e) *Technology Transfer.* (1) SBA within existing resources, will assist small firms by identifying and transferring applicable and available technology for purposes which may include product development, process improvement, problem-solving, or state-of-the-art information.

(2) *Procedures.* (i) Small business firms may request technology assistance at any SBA district or regional office. The majority of requests come from small business firms as a result of SBA information flyers which describe the services available. The Reader Service portion of the information flyer is completed by the small firm and forwarded to SBA for action.

(ii) SBA will make every effort to respond initially to these requests within 30 days. Whenever possible, this response will be in the form of personal or telephone contact with the appropriate individual at the requesting firm.

(iii) Where necessary, SBA will assist the firm to clearly and adequately define the problem or request for technical information.

(iv) SBA will locate the requisite
echnology and provide it to the re-
uesting firm.

4 FR 60274, Oct. 19, 1979. Redesignated at
2 FR 48392, Dec. 22, 1987]

PART 128—GRANTS FOR SMALL BUSINESS RESEARCH

ec.

28.7 Statutory provision.
28.7-1 Scope.
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28.7-9 Administration of a grant.
28.7-10 Revocation of a grant.

Authority: Secs. 5, 7, 72 Stat. 385, 387, as
nended (15 U.S.C. 634, 636).

Source: 24 FR 7063, Sept. 1, 1959, unless
therwise noted.

128.7 Statutory provision.

Sec. 7(d). The Administration also is em-
owered to make grants to any State Gov-
rnment, or any agency thereof, State char-
ered development credit or finance corpo-
ations, land-grant colleges and universities,
nd colleges and schools of business, engi-
eering, commerce, or agriculture for stud-
s, research and counseling concerning the
anaging, financing, and operation of
nall-business enterprises and technical and
atistical information necessary thereto in
rder to carry out the purposes of section
b)(1) by coordinating such information
ith existing information facilities within
e State and by making such information
ailable to State and local agencies. Only
e such grant shall be made within any
e State in any one year, and no such
ant shall exceed an aggregate amount of
0,000. Such grants shall be made from the
nd established in the Treasury by section
2(b) of the Small Business Investment Act
1958.

128.7-1 Scope.

(a) The regulations in this part
overn the issuance of grants by the
mall Business Administration for
udies, research and counseling con-
rning the managing, financing and
eration of small business enterprises
thorized by section 7(d) of the
mall Business Act, as amended.

(b) Under section 7(d) of the Act, the Small Business Administration is authorized to make grants to finance the development and gathering of information relating to managing, financing and operation of small business enterprises. This information will be used to provide managerial aids to small business in accordance with the provisions of section 8(b)(1) of the Small Business Act, as amended. (See § 124.8 of this chapter.) This information will be coordinated with informational facilities within the States and made available to State and local agencies.

§ 128.7-2 Definitions.

As used in this part:

(a) "Act" means the Small Business Act (Pub. L. 85-536), as amended (Pub. L. 85-699).

(b) "Administrator" means the Administrator of SBA.

(c) "Application" means a written request for a grant on SBA Form 459.

(d) "Counseling" means consulting and advising with SBA for the purpose of developing information concerning the managing, financing and operation of small business enterprises, such information to be channeled through SBA for the use of national, State and local agencies and institutions listed in section 8(b)(1) of the Small Business Act.

(e) "Director" means the Director of the Office of Management and Research Assistance.

(f) "Grant" means a grant authorized under section 7(d) of the Act.

(g) "Grant Agreement" means the agreement contained in SBA Form 459 and any other conditions of the grant.

(h) "Grantee" means an institution to which a grant has been made.

(i) "Institution" means any State government or any agency thereof, any State chartered development credit or financial corporation, any college, any university, and any school of business, engineering, commerce or agriculture, either public or private.

(j) "Project" means a proposal, or its components when two or more areas of research are involved, and any amendments thereto, approved by SBA.

(k) "Project Director" means the person assigned by an institution to supervise and be responsible for a research program under a grant.

(l) "Proposal" means a research program, which may include "studies," submitted by an institution in its application for a grant under section 7(d) of the Act.

(m) "Research" means research, studies, and counseling which will result in information to be distributed by SBA, acting as a clearinghouse, to national, State, and local agencies and institutions listed in section 8(b)(1) of the Act. Research includes basic and secondary investigations.

(n) "SBA" means the Small Business Administration.

(o) "Small business concern" or "Small business enterprise" means a business concern which would qualify as a small business, as defined by SBA in Part 121 of this chapter.

(p) "State" means the several States, the Territories and possessions of the United States, the Commonwealth of Puerto Rico and the District of Columbia.

(q) "State government or agency thereof" means departments, divisions or other designated organizations controlled and operated by the State including State government corporations.

(r) "Studies" means brief investigations of the economic background or problems of an industry or specific small business in its geographic locality but shall not include management or financial counseling or credit analysis.

(s) "Year" means the fiscal year beginning July 1 and ending June 30.

§ 128.7-3 Organization.

(a) The grant program authorized by section 7(d) of the Act is administered through the Office of Management and Research Assistance, Small Business Administration, Washington, D.C. 20416. The Director of this office is responsible for planning and coordinating small business management and research assistance programs and coordinating the activities of the Management Research Advisory Council.

(b) The Management Research Advisory Council is an advisory group established to examine and make recommendations with respect to the merits of an application for a grant and to furnish advice on the grant program. The function of said Council is purely advisory. The members of the Council are selected and appointed by the Administrator and serve at his pleasure and without compensation.

(c) All recommendations of the Management Research Advisory Council are submitted to the Administrator who, in his discretion, shall determine which proposals shall be approved and which suggestions shall be put into practice.

§ 128.7-4 Who is eligible for a grant.

Any State government or any agency thereof, any State chartered development credit or finance corporation, any university, any college and any school of business, engineering commerce or agricultural, either public or private, is eligible to receive a grant.

§ 128.7-5 Purpose of a grant.

(a) A grant will be made by SBA only to finance research concerning the managing, financing and operation of small business enterprises to develop information or techniques which can be used by public or private organizations to aid small business enterprises, or to develop information which improves knowledge of the economy through research on the small business sector.

(b) No proposal nor portion of a proposal will be approved if its primary purpose is to provide information to be used to urge industry and trade located in one State to move to another.

§ 128.7-6 Amount of a grant.

No grant may exceed an aggregate amount of $40,000. Only one such grant may be made within any one State in any one year. SBA is not authorized to commit itself in any year to make a grant during subsequent years.

§ 128.7-7 Application for a grant.

(a) Applications (SBA Form 459) and Instructions (SBA Form 459A) are vailable at SBA field offices and at ie SBA Washington, D.C. office.

(b) An application may be initiated y any institution described in § 128.7- Prior to submission, the application nd the proposal to perform research nder the grant contained therein, ay be discussed informally with SBA aff members. When appropraite, BA staff members may suggest a new roposal or modification of a proposal ubmitted. If two or more institutions ithin a State desire to cooperate in arrying out proposals, such combined roposals may be considered. However, nly one grant may be authorized. herefore, the application must designate which of the cooperating institutions is to be the grantee. This institution will be responsible to SBA for carying out the project in its entirety nd SBA will not be obligated in any ay to any institution other than the rantee.

(c) Applications must be received by BA on or before the 31st day of Octoer of the fiscal year for which the rant is requested. Applications reeived after that date will not be conidered.

(d) Six copies of the application hall be submitted to the Director, ffice of Management and Research ssistance, Small Business Administration, Washington, D.C., 20416. Applications received by SBA will not be eturned to the applicant.

128.7-8 Method of evaluating and selecting an application.

(a) An application will be reviewed y the Office of Management and Research Assistance for eligibility and ther requirements set forth in this art. An application containing a proosal which, on its face, appears eligile and meritorious shall be submitted the Management Research Adviso Council for a further examination f the merits of the application. The ouncil will recommend to the Admintrator an application which merits a rant. The Administrator may, within is discretion, approve or reject this commendation.

(b) An application shall be evaluated n the basis of the current need and riority of importance of the anticiated results of the proposal contained therein; the qualifications and experience of the Project Director and staff; the practicability and utility of the proposal; the amount of total direct expenses as compared with overhead expenses; and the amount of actual funds to be contributed or arranged for by the institution itself.

(c) Although matching funds are not required, the competing application in any State which is approved will be the one with the greatest amount of matching funds, when other conditions are approximately equal. These matching funds can be measured either in terms of dollar value of services performed (not included as such in the grant) or supplementary contributions of cash to be used in the conduct of the research project.

§ 128.7-9 Administration of a grant.

(a) *Conditions of a grant.* The grant agreement as set forth in SBA Form 459 contains express conditions, which when accepted will bind the grantee. The conditions contained in the grant agreement may be amended by mutual agreement of the parties but the amount of the original grant may not be increased as a result of any such amendments to an amount in excess of $40,000.

(b) *Grant agreement.* The grant agreement as set forth in SBA Form 459 is as follows:

It is understood and agreed by the applicant:

(1) That the project will be performed substantially as described in this application and as approved by SBA, and that the funds granted as a result of your request are to be expended for the purposes set forth herein;

(2) That if the project proceeds in accordance with the schedule contained in this application, then the grant funds shall be paid in advance on a semi-annual basis in amounts based on the estimated requirements for the subsequent six month period, up to 90 percent of the grant, and the balance upon completion of the project and receipt by this Agency of a satisfactory final report;

(3) That the project shall be directed and supervised by the Project Director

named herein and no other Project Director shall be appointed without the approval of SBA;

(4) That such accounts shall be kept (in accordance with accepted accounting practices) as are necessary to prepare the financial reports required herein and that inspection and audit by representatives of SBA and the United States General Accounting Office of expenditures under the grant shall be permitted during the life of the grant and for three years thereafter;

(5) That written reports of the progress of the project and of the expenditure of funds under the grant will be furnished every six months after the grant has been awarded, or more frequently as SBA may reasonably require; that the project shall be completed and the final report submitted to SBA by the date specified herein; that at least 500 copies of the final report shall be furnished to SBA in such form as SBA may approve; and that a typewritten summary statement of not more than 3,000 words covering the major findings of the project shall be prepared and submitted in triplicate;

(6) That the grant may be revoked in whole or in part at any time by the Administrator of the SBA provided that such action shall not affect commitments of funds made prior to the effective date of the revocation if such obligations were made solely for the purposes set forth in this application. If the grant is revoked because of a substantial deviation, not approved by SBA, from the project or this agreement then the amount of the grant then paid may be recovered by SBA.

(c) *Establishing the amount of a grant.* In considering the budget for a grant, SBA will recognize that substantial contributions may be made by the grantee in such form as space, equipment, library facilities, and, in many cases, as payment of the salaries or parts of the salaries of the Project Director and staff. SBA normally will include in the grant, funds for such items as the salaries of personnel, materials, necessary travel, publication and other direct costs.

(d) *Grant period.* The Act limits SBA to making one grant within any one State in any one year; however, the project does not have to be completed within the year but may be for a period of longer duration as provided in the grant agreement. When progress of research under the grant is delayed and circumstances make it necessary to request an extension of the grant period without additional funds, SBA may, upon written request of the grantee, permit extensions in time. Such an extension, however, may require a spread out of the remaining payments under the grant.

(e) *Payment of a grant.* In general, payment will be made in advance to the grantee only, based on the estimated requirements for the subsequent six month period, up to 90 per cent of the grant, and the balance upon completion of the project and approval and acceptance by SBA of the final report.

(f) *Accounting procedures and audit.* While no particular classification of accounts is required, a grantee shall keep such accounts for each project (in accordance with generally accepted accounting practices) as are necessary to permit it to prepare the required financial reports as required in paragraph (g) of this section, and to make possible a determination by SBA that the grant has been used for the purposes for which the grant was made. All accounting records relating to expenditures under the grant are subject to inspection and audit by representatives of SBA and the United States General Accounting Office during the life of the grant and for three years thereafter.

(g) *Reports.* (1) Progress and financial reports must be made to SBA on work financed by the grant. Specific conditions regarding frequency of submission and nature of reports will be set forth in each grant agreement.

(2) The final report on the project must be submitted to SBA within the time allowed. From time to time, SBA representatives may visit the project sites and at, such time, verbal reports will be expected.

§ 128.7-10 Revocation of a grant.

Each grant will be made subject to a condition that it may be revoked in whole or in part. A revocation shall not affect any commitment of funds made by the grantee which was made in accordance with the project prior to the effective date of revocation. Any substantial deviation from the project not approved by SBA will be deemed to be a breach of the grant agreement and grounds for termination of the grant in its entirety. In this event SBA assumes no responsibility for any commitment of funds made by the grantee.

PART 129—MANAGEMENT ASSISTANCE

GENERAL

Sec.
129.1 Management Assistance programs.
129.2 Counseling.
129.3 Training.
129.4 Publications.
129.5 International trade.

SERVICE CORPS OF RETIRED EXECUTIVES (SCORE) AND ACTIVE CORPS OF EXECUTIVES (ACE) PAYMENT OF OUT-OF-POCKET EXPENSES

129.6 Introduction.
129.7 Reimbursement for expenses within a 50-mile radius of home.
129.8 Reimbursement for expenses for services beyond 50 miles.
129.9 Meetings, conferences, and workshops.

AUTHORITY: Secs. 2 and 8, Small Business Act, as amended (15 U.S.C. 631, 637(b)); secs. 7(i) and 7(j) of the Small Business Act, as amended; (15 U.S.C. 636 (i) and (j)); sec. 302(c)(2), Domestic Volunteer Service Act, Pub. L. 93-113, 87 Stat. 404; E.O. 11871 dated July 18, 1975.

SOURCE: 43 FR 5801, Feb. 10, 1978, unless otherwise noted.

GENERAL

§ 129.1 Management Assistance programs.

The need for assistance in starting, managing, and operating a business is heightened by the number of failures that continue to increase every year in the small business community. It is estimated that managerial deficiencies cause 9 out of 10 business failures. A major objective of the Small Business Administration is to remedy this situation. Through the programs of the Office of Management Assistance, SBA works to improve and strengthen the management capabilities of small business.

§ 129.2 Counseling.

Individualized management and technical assistance is provided to small business-persons, and those who are considering starting a business, through the various resources of the management assistance counseling programs at no charge. Management assistance counseling programs are based primarily on private sector resources, as follows:

(a) *SCORE and ACE.* The Service Corps of Retired Executives (SCORE), is a group of experienced retired executives who volunteer their services and offer a wide range of management and technical counseling to the small business community. Many were owners of small business concerns. The Active Corps of Executives (ACE) is an important auxiliary to SCORE. ACE is composed of executives who are still active in the business world. Members of ACE frequently furnish needed special talents which may not be represented among the SCORE volunteers of a specific locality.

(b) *Small Business Institute.* This program is a three-way cooperative among collegiate schools of business administration, members of the nation's small business community and the Small Business Administration. Graduate and upper division level students of business administration, under faculty supervision, provide counseling assistance to small business owner/managers. The program operates under formal contracts or voluntary agreements between SBA and the schools.

(c) *Professional consulting services.* The Small Business Administration enters into contracts with professional consulting concerns to provide management and technical assistance to small business concerns meeting the eligibility requirements specified in § 119.21 of this chapter.

Services provided under this program may include accounting services, production, engineering and technical advice, feasibility studies, marketing analyses, etc.

§ 129.3 Training.

(a) Training provided by the Small Business Administration is designed to impart the principles and skills of small business management to those persons who own or manage a business, or to those who intend to try. To meet these needs, four types of classroom training are offered—courses, conferences, and problem clinics for those already in business, and prebusiness workshops for those who intend to go into business. Except for prebusiness workshops, which are structured to provide a basic "going into business" orientation, this training is designed to meet local small business needs. To provide a wide variety of managmenet subjects in hundreds of locations throughout the nation, SBA cosponsors training with educational institutions, local businesss organizations, chambers of commerce, professional or trade associations, business groups, and other government agencies.

(b) Cosponsorship of training activities is enhanced by the availability of films and other training materials produced for SBA. Information about specific training schedules on cosponsorship procedures may be obtained from any SBA field office.

§ 129.4 Publications.

SBA produces a series of business management publications which provide small business owner/managers, or those persons considering going into business, with information about modern management techniques. The publications are practical and easy to read. There are four series of free publications: Management Aids for Small Manufacturers, Small Marketers Aids, Small Business Bibliographies, and Counseling Notes. These 6-8 page leaflets covering marketing and manufacturing business information, as well as bibliographical information on specific trades and industries, are available free of charge from SBA field offices. A series of managment publications explaining business subjects like "cash planning" in considerable detail, and a series on starting and managing various types of businesses are available at nominal prices through the Superintendent of Documents, Washington, D.C. 20402.

§ 129.5 International trade.

SBA offers several publications and programs designed to encourage and assist existing and prospective small business exporters to develop their international marketing potential. Counseling assistance is available from local field offices and the agency periodically offers and cosponsors various export workshops and training programs. Application for managment assistance services may be made through SBA district offices.

Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) Payment of Out-of-Pocket Expenses

§ 129.6 Introduction.

The Small Business Act, as amended, Pub. L. 90-104, and the Domestic Volunteer Service Act of 1973, Pub. L. 93-113, authorize the reimbursement of volunteers of the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) for certain out-of-pocket and travel expenses. The out-of-pocket expenses must be incident to their provision of services under this Act. Travel expenses are authorized while the volunteers are providing services away from their home or regular place of business. Travel expenses include per diem in lieu of subsistence.

§ 129.7 Reimbursement for expenses within a 50-mile radius of home.

A volunteer will be reimbursed while performing services within a 50-mile radius of his home or regular place of business for the following expenses: Local phone calls, parking fees, public transportation, bus and train fares; local taxis; personal automobile mileage charges authorized by the Standardized Government Travel Regulations; highway tolls and related expenses necessary to the provision of volunteer services approved by the appropriate District or Regional Office.

§ 129.8 Reimbursement of expenses for services beyond 50 miles.

A volunteer may provide services beyond a radius of 50 miles from his home or regular place of business only with the prior approval of the appropriate SBA Regional or District Office. Upon receipt of such approval, he will be reimbursed only for the following expenses:

(a) Automobile travel, including personal automobile mileage charges authorized by Standardized Government Travel Regulations, highway and related tolls; and parking fees.

(b) Other travel, including bus and rail, airplane (where specifically authorized by the appropriate SBA District or Regional Office official), local taxis, and public transportation.

(c) Per diem expenses in lieu of subsistence as authorized by the Standard Government Travel Regulations.

(d) Miscellaneous related expenses including local phone calls, approved by the appropriate SBA District or Regional Office.

§ 129.9 Meetings, conferences, and workshops.

With prior approval of the appropriate SBA District or Regional Office, an authorized delegate to SCORE and ACE national, regional, or district meetings, conferences, or workshops, is authorized to receive travel expenses and per diem as provided in §§ 129.2 and 129.3. Members of the National SCORE Council may also be reimbursed for necessary expenses to attend authorized meetings, conferences, and workshops in accordance with the provisions of §§ 129.2 and 129.3.

PART 131—LOAN MORATORIUM PROGRAM

Sec.
131.1 Statutory provisions.
131.2 Definitions.
131.3 General.
131.4 Criteria.
131.5 Time periods.
131.6 Repayment.
131.7 Termination.

AUTHORITY: Pub. L. 95-89, approved Aug. 1, 1977, 91 Stat. 553 (15 U.S.C. 634(b)(6) and 634(e)).

SOURCE: 44 FR 60718, Oct. 22, 1979, unless otherwise noted.

§ 131.1 Statutory provisions.

The statutory provisions will be found at 15 U.S.C. 634(e).

§ 131.2 Definitions.

As used in this part:

"*SBA*" means the Small Business Administration.

"*Moratorium*" means the fulfillment by SBA of a borrower's obligation to a participating lender under an SBA-guaranteed loan by the making of payments to such lender on the borrower's behalf.

"*Deferment*" means the procedure whereby a lender (participant or SBA) suspends a borrower's obligation to make payments on a loan for a stated period of time.

§ 131.3 General.

(a) SBA may, upon written application by a borrower, suspend or undertake borrower's obligation to repay principal and interest on an SBA direct, immediate participation or guaranteed loan.

(b) When SBA has decided to suspend payment on a direct or immediate participation loan, a deferment will be approved under administrative procedures, and payment by borrower will not be required for a stated time period.

(c) In the case of a guaranteed loan, SBA may undertake a borrower's obligation to a participating lender for a period or aggregate periods not to exceed five (5) years. The loan may be extended beyond the statutory limit for a corresponding period of time to accommodate repayment of the obligation undertaken by SBA.

§ 131.4 Criteria.

Undertaking of the borrower's obligation under a guaranteed loan may only be considered if all the following conditions are met:

(a) SBA determines that without such undertaking the business will become or remain insolvent;

(b) SBA determines that with such undertaking the business will become or remain viable;

(c) SBA determines that alternative remedies, such as a simple deferment, are not available;

(d) The lender has granted a deferment(s) to the borrower equivalent to at least six (6) monthly installments immediately prior to moratorium approval and, in the opinion of the lender and SBA, such deferment(s) provided a beneficial result;

(e) All parties concerned execute a "Moratorium Agreement" satisfactory to SBA;

(f) The borrower and all co-makers of the guaranteed loan execute a demand note to repay SBA's moratorium advances, and all guarantors or other obligors of the guaranteed loan execute guarantee agreement(s) or any other instruments required by SBA to protect its interests under the demand note;

(g) The borrower and any other obligors provide such security as SBA deems necessary or appropriate to insure that the rights and interests of the lender (SBA or participant) will be safeguarded adequately during and after the moratorium period; and

(h) Collateral securing the demand note shall include, but need not be limited to, all the collateral securing the guaranteed loan, and the lien positions for the demand note on such collateral shall only be subject to prior liens for the guaranteed loan.

§ 131.5 Time periods.

(a) Moratoriums will be limited to six months of future payments unless the SBA deems it necessary to authorize a maximum term of one year in a particular case. If beneficial results are evident to SBA after such period, the moratorium may be continued for additional periods.

(b) Succeeding moratoriums to a maximum aggregate period of five (5) years will not be authorized unless financial analysis indicates:

(1) A continued need for the undertaking;

(2) A significant benefit to the borrower; and

(3) Eventual viability (anticipated ability to repay from earnings) of the borrower.

§ 131.6 Repayment.

(a) Repayment by the borrower of SBA's moratorium advances shall be made pursuant to the demand note executed by the borrower. SBA shall have the right to demand payment at any time SBA determines repayment is necessary or appropriate. The interest rate for the demand note shall be the same as for the guaranteed loan. SBA may demand payment in full of the principal and interest due under the demand note, or SBA may agree with the borrower on a repayment schedule which can include, but shall not be limited to, periodic repayments not less in amount and frequency than under the guaranteed loan. If SBA does not demand repayment until the borrower has repaid the guaranteed loan in full, SBA shall immediately thereafter demand repayment under the demand note.

(b) Advances made by SBA to the lender on behalf of the borrower during the moratorium period(s) will accrue interest at the note rate from the date of each disbursement by SBA. Repayments to SBA by the borrower will be applied first to payment of accrued interest with the balance, if any, to be applied in reduction of principal.

§ 131.7 Termination.

The "Moratorium Agreement" shall provide that SBA shall have absolute discretion to determine at any time whether to make or to discontinue making payments to the lender on behalf of the borrower.

PART 132—RULES FOR IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT

Subpart A—General Provisions

Sec.

132.101 Purpose of these rules.
132.102 When the Act applies.
132.103 Proceedings covered.
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Subpart B—Allowable Fees and Expenses

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Subpart D—Procedures for Considering Applications

132.401 Filing and service of documents.
132.402 When applications can be filed.
132.403 Decisions.
132.404 Judicial review.

Subpart E—Payment

132.501 Payment of awards.

AUTHORITY: 5 U.S.C. 504 and 504 note.

SOURCE: 47 FR 22085, May 21, 1982, unless otherwise noted.

Subpart A—General Provisions

§ 132.101 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 and 504 note, provides for awarding attorney fees and other adjudication expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before this Agency. Parties may be able to receive awards when they prevail over the Agency, unless the Agency's position in the proceeding was substantially justified. These rules define eligible parties and identify the kinds of proceedings covered. They also explain how to apply for awards, and the procedures and standards that this Agency will use to make them.

§ 132.102 When the Act applies.

The Act applies to any adversary adjudication pending before the Agency at any time between October 1, 1981, and September 30, 1984. This includes proceedings begun before October 1, 1981, if final Agency action has not been taken before that date, and proceedings pending on September 30, 1984, regardless of when they were initiated or when final Agency action occurs.

§ 132.103 Proceedings covered.

(a) The Act applies to adversary adjudications conducted by this Agency. An adversary adjudication is an adjudication required to be conducted under 5 U.S.C. 554 in which the position of this or any other agency, or any component of any agency, is represented by an attorney or other representative who enters an appearance and participates in the proceedings. For this Agency, cases ordinarily covered are:

(1) Matters conducted pursuant to section 8(a)(9) of the Small Business Act, 15 U.S.C. 637(a)(9), and

(2) Matters conducted pursuant to sections 309 and 313 of the Small Business Investment Act, 15 U.S.C. 687a and e.

(b) If this Agency orders a particular matter to be determined as an adversary adjudication under the procedures set out in 5 U.S.C. 554, the Act will apply, and this Agency will so state in its order designating the matter of hearing.

§ 132.104 Eligibility of applicants.

(a) In order to be eligible for an award of attorney fees or other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). For the purpose of determining eligibility, the "party" shall be the person or entity identified in the order or notice initiating the proceeding or permitting intervention in it. All conditions of eligibility set out in this subpart and in Subpart C must be satisfied.

(b) The types of eligible applicants are as follows:

(1) Individuals with a net worth not more than $1 million;

(2) Sole owners of unincorporated businesses if the owner has a net worth of $5 million or less and not more than 500 employees;

(3) Charitable or other organizations exempted from taxation by section 501(c) (3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) having not more than 500 employees;

(4) Cooperative associations as defined in section 15(a) of the Agricul-

tural Marketing Act (12 U.S.C. 1141(a)) having not more than 500 employees; and

(5) All other partnerships, corporations, associations or public or private organizations having $5 million or less net worth than 500 employees.

(c) For the purposes of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(d) Whether an applicant who owns an unincorporated business will be considered as an "individual" or a "sole owner of an unincorporated business" will be determined by whether the applicant's participation in the proceeding is related primarily to individual interests or business interests.

(e) The employees of an applicant include all those persons regularly providing work at the time the proceeding was initiated, whether or not at work on that date.

(f) An applicant's net worth includes the value of any assets disposed of for the purpose of meeting an eligibility standard and excludes any obligations incurred for this purpose. Transfers of assets or obligations incurred for less than reasonably equivalent value will be presumed to have been made for this purpose.

(g) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. "Affiliates" are other individuals, corporations or other entities directly or indirectly connected to the applicant by a chain of ownership or control of a majority of the voting shares or other interests.

(h) An applicant is not eligible if it appears from the facts and circumstances that it has participated in the proceeding only on behalf of other persons or entities that are ineligible.

§ 132.105 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses unless the position for an agency during the proceeding, or with respect to an ancillary or subsidiary issue in the proceeding that is sufficiently significant and discrete to merit treatment as a separate unit, was substantially justified. To avoid an award, the agency must carry the burden of proof that its position was reasonable in fact and law. No presumption arises that SBA's position was not substantially justified simply because it did not prevail in a given proceeding.

(b) Awards for fees and expenses incurred before the date on which a proceeding was initiated are allowable only if the applicant can demonstrate that they were reasonably incurred in preparation for the proceeding.

(c) Awards will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if other special circumstances make an award unjust.

§ 132.106 Awards against other agencies.

No other agency may intervene or otherwise participate as a party in proceedings in this agency covered by this part unless it has agreed that it will pay any fee awards for which this agency determines it is liable under these rules, subject to judicial review.

Subpart B—Allowable Fees and Expenses

§ 132.201 Attorney, agent and expert witness fees.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses. Awards will be calculated on this basis for all fees and expenses actually incurred. If the services were provided by an employee of the applicant or were made available free or at a reduced rate, fees and expenses will be calculated at such reduced rate.

(b) Under the Act, an award for the fees of an attorney or agent may not exceed $75.00 per hour, regardless of the actual rates charged by the attorney or agent. An award for the fees of an expert witness may not exceed $25 per hour, regardless of the actual rate charged by the witness.

(c) In determining the reasonableness of the fees sought for attorneys, agents or expert witnesses, the adjudication officer shall consider factors bearing on the request, such as:

(1) If the attorney, agent or witness is in private practice, his or her customary fee for like services;

(2) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant, and

(4) The time reasonably spent in light of the difficulty and complexity of the issues in the proceedings.

§ 132.202 Studies, analyses, engineering reports, tests and projects.

The reasonable cost (or the reasonable portion of the cost) of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded to the extent that:

(a) The charge for the services does not exceed the prevailing rate payable for similar services, and

(b) The study or other matter was necessary to the preparation of the party's case.

Subpart C—Form of Application

§ 132.301 Contents of basic application.

(a) Applications shall be in writing and shall contain (1) the name of the applicant and the identification of the proceeding, (2) a declaration that the applicant believes that it has prevailed, and an identification of each issue as to which the position of an agency or agencies in the proceeding was not substantially justified, (3) a statement of the applicant's type (in terms of the types of applicants described § 132.104), (4) for each applicant other than an individual as defined in § 132.104, a statement of the numbers of its employees on the date on which the proceeding was initiated, (5) for each applicant other than an individual or a sole owner of an unincorporated business, a description of any affiliated individuals or entities, as the term "affiliated" is defined in § 132.104, or a statement that none exist, (6) where applicable, a statement that the applicant had a net worth not more than the ceiling established for its type, as of the date which the proceeding was initiated, and (7) any other matters that the applicant believes appropriate.

(b) Applications filed by a tax exempt organization described in § 132.104 shall also contain either (1) a statement that the applicant was listed, on the date of the initiation of the proceeding, in the then-current edition of IRS Bulletin 78, "Organizations qualified under section 170(c) of the Internal Revenue Code of 1954," or (2) if the applicant is a tax exempt religious organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a brief description of the organization and statement of the basis for its belief that it is exempt. Qualified tax exempt organizations are not required to file a statement of net worth.

(c) Applications filed by a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) shall also include a copy of the cooperative's charter or articles of incorporation and of its bylaws. Qualified cooperatives are not required to file a statement of net worth.

(d) All applications shall be signed by the applicant, or a responsible and knowledgeable official of an applicant that is not an individual. The individual signing the application shall state that the application and the statement of the net worth (if any) are true and complete to the best of his or her information and belief, and that he or she understands that the application and statement are official statements subject to section 1001 of the United States Criminal Code (18 U.S.C. 1001), which provides that making a false official statement is a felony punishable by fine and imprisonment. The individual signing the application shall also provide the address and telephone number at which he or she can be contacted to verify or explain any information in the application.

§ 132.302 Statement of net worth.

(a) Each applicant except a qualified tax exempt organization or a qualified cooperative must submit with its application a detailed exhibit showing its net worth at the time the proceeding was initiated. If any individual, corporation, or other entity directly or indirectly controls or owns a majority of voting shares or other interest of the applicant, or if the applicant directly or indirectly owns or controls a majority of voting shares of other interest of any corporation or other entity, the exhibit must include a showing of the net worth of all such affiliates. The exhibit may be in any form convenient to the applicant, provided that it makes full disclosure of the applicant's and any affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards of 5 U.S.C. 504(b)(1)(B)(i). The adjudicative officer may require an applicant to file additional information to determine the applicant's eligibility for an award.

(b) The net worth exhibit shall describe any transfers of assets from, or obligations incurred by, the applicant or any affiliate, occurring in the one-year period prior to the date on which the proceeding was initiated, that reduced the net worth of the applicant and its affiliates below the applicable net worth ceiling. If there were no such transactions, the applicant shall so state.

(c) The net worth exhibit shall not be included in the public record of the proceeding and may be excised from pleadings required to be served on all other parties to the proceeding in accordance with § 134.14(b) of this chapter.

[47 FR 22085, May 21, 1982, as amended at 49 FR 33630, Aug. 24, 1984]

§ 132.303 Statements of fees and expenses.

(a) All applications shall be accompanied by an itemized statement or statements of the fees and expenses of the attorneys, expert witnesses, and agents, incurred in connection with the proceeding, for which an award is sought out.

(b) A separate itemized statement, showing the hours spent in work in connection with the proceeding by each individual and a description of what was accomplished, the rate at which fees were computed, the total amount claimed, and the total amount agreed to be paid by the applicant, must be submitted for each person, firm or other entity for which the applicant seeks an award.

(c) The rules governing the allowance of fees and expenses, set forth in Subpart B of this part, shall be followed. Expenses must be verifiable in accordance with the standards published by the Internal Revenue Service for the documentation of business expenses.

(d) Each separate statement must be verified by the person, firm or other entity performing services for which an award is sought, in accordance with the requirements set forth in paragraph (d) of § 132.301.

Subpart D—Procedures for Considering Applications

§ 132.401 Filing and service of documents.

All applications for an award of fees shall be filed in accordance with § 134.11(a) of this chapter. Service of such application shall commence the proceeding which shall thereafter be conducted in accordance with the provisions of Part 134 by the adjudicative officer (*i.e.*, an Administrative Law Judge of the Office of Hearings and Appeals), who shall issue an initial decision in the case. The Administrator shall be the reviewing official for purposes of § 134.34.

[47 FR 22085, May 21, 1982, as amended at 49 FR 33630, Aug. 24, 1984]

§ 132.402 When applications can be filed.

(a) The Act provides that an application for an award may not be made later than thirty days after final Agency action on the proceeding. This Agency does not have the power to allow exceptions for later filings, and thus the applicant must serve and file the application no later than 30 days after the Agency decision becomes final in accordance with § 134.32 of this chapter.

(b) An application may be filed any time, before the last filing date as determined under paragraph (a) of this section, that the applicant believes that it has prevailed. An applicant has prevailed when the Agency has taken favorable action with respect either to the entire proceeding or to an ancillary or subsidiary issue in the proceeding that is sufficiently significant and discrete to merit treatment as a separate unit.

[47 FR 22085, May 21, 1982, as amended at 49 FR 33630, Aug. 24, 1984]

§ 132.403 Decisions.

The decision on the reasonableness of the amount requested shall include an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings or whether other special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

[47 FR 22085, May 21, 1982. Redesignated and amended at 49 FR 33630, Aug. 24, 1984]

§ 132.404 Judicial review.

Judicial review of final agency decisions on awards may be obtained as provided in 5 U.S.C. 504(c)(2).

[47 FR 22085, May 21, 1982. Redesignated at 49 FR 33630, Aug. 24, 1984]

Subpart E—Payment

§ 132.501 Payment of awards.

An applicant seeking payment of an award shall submit to the Controller of SBA a copy of the Agency's final award along with a statement that it will not seek review (or further review) of the agency decision, or on the award, in the United States courts. The Agency will pay the applicant the amount awarded within 60 days after receiving the applicant's submission, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

PART 133—INDEX TO APPROVED SBA REPORTING AND RECORDKEEPING REQUIREMENTS

AUTHORITY: 44 U.S.C. 3512.

§ 133.1 Control numbers assigned by OMB under the Paperwork Reduction Act.

(a) *Purpose.* This part collects and displays the control numbers and expiration dates assigned to the SBA reporting and recordkeeping requirements that have been approved by the Office of Management and Budget (OMB) according to the Paperwork Reduction Act. SBA intends that this part comply with the requirements of that Act and 5 CFR Part 1320 to display a current control number assigned by the Director, OMB on each approved reporting and recordkeeping requirement. This part contains current OMB control numbers, expiration dates, regulatory cross-references, and, where applicable, form numbers. Where the reporting and recordkeeping requirements exist as documents separate from SBA regulations, they will also display the current OMB approval numbers.

(b) *Public protection.* Any member of the public who has reason to believe any SBA office or agent is in violation of the Public Protection Clause of the Paperwork Reduction Act (44 U.S.C. 3512; 5 CFR 1320.5) should notify SBA's Single Agency Official. Direct comments to the Associate Deputy Administrator for Resource Management, 1441 L Street, NW., Washington, D.C. 20416.

(c) Index to OMB-approved reporting and recordkeeping requirements.

Current OMB Control No	Information collection requirement	Legal authority	Expiration date
3245-0003	SBA 745 SBA 745A	13 CFR 125.9	10-31-88
3245-0007	SBA 990 SBA 994 SBA 994B SBA 994C SBA 994F	15 U.S.C. 6942, 6946 13 CFR Part 115	5-31-89

Current OMB Control No.	Information collection requirement	Legal authority	Expiration date
	SBA 994H SBA 994J		
3245-0012	SBA 770	13 CFR 123.9	10-31-90
3245-0013	SBA 74 SBA 74A SBA 74B SBA 183	13 CFR 125.5	3-31-89
3245-0015	SBA 1010 A-E, I	Pub. L. 95-507 Pub. L. 96-481 13 CFR 124.1	9-30-90
3245-0016	SBA 4 SBA 4I SBA 4 Sched. A	13 CFR 122.309	10-31-90
3245-0017	SBA 5 SBA 739A SBA 1368A, B, C	13 CFR Part 123	10-31-89
3245-0018	SBA 5C SBA 739	13 CFR 123.1	4-30-90
3245-0019	SBA 933 SBA 1099 SBA 1100	13 CFR 101.2-7	3-31-88
3245-0020	SBA 1136 SBA 1136A	13 CFR 111.8	6-30-88
3245-0046	SBA 1174	13 CFR 101.2-7	9-30-89
3245-0062	SBA 415 SBA 415A	13 CFR 107.102	7-31-90
3245-0063	SBA 468.1, .2, .3, .4		6-30-88
3245-0071	SBA 1244 A & B	13 CFR 108.503	8-31-88
3245-0073	SBA 1246	13 CFR 108.503	9-30-90
3245-0074	SBA 1253 A & B	13 CFR 108.503	10-31-89
3245-0075	SBA 20	13 CFR 101.2-7	4-30-90
3245-0076	SBA's Nondiscrimination Rules and Regulations and SBA 793.	13 CFR 112.9, 113.5	8-31-88
3245-0077	Reporting and Recordkeeping Requirements on Non-Bank Lenders.	13 CFR 120.303	10-31-90
3245-0078	SBA 1031	13 CFR 107.1102	4-30-90
3245-0079	SBA 419		10-31-90
3245-0080	SBA 1081		4-30-90
3245-0081	SBA 25 SBA 26 SBA 27 SBA 28 SBA 33 SBA 34 SBA 444C SBA 1022 SBA 1022A SBA 1065		4-30-90
3245-0083	SBA 415C	13 CFR 107.1105	9-30-90
3245-0084	SBA 700	13 CFR Part 123	11-30-90
3245-0090	SBA 59	13 CFR 101.2-7	4-30-90
3245-0091	SBA 641	13 CFR 101.2-7	12-31-90
3245-0092	SBA 610	13 CFR 101.2-7c	8-31-88
3245-0095	SBA 1175		6-30-88
3245-0096	SBA 883	Presidential Proclamation Designating Small Business Week	1-31-90
3245-0101	SBA 355, 1340	13 CFR Part 121	3-31-88
3245-0108	SBA 1062	13 CFR 101.2-7	6-30-88
3245-0109	SBA 857	13 CFR 107.1101	7-31-90
3245-0110	SBA 1366 SBA 1391	13 CFR 123.17	4-30-90
3245-0112	SBA 1301	13 CFR 108.503	7-31-90
3245-0114	SBA 1302		7-31-90
3245-0116	SBA 860	13 CFR 107.1101	7-31-90
3245-0117	SBA 266 CO		6-30-89
3245-0118	SBA 856	13 CFR Part 107	6-30-89
3245-0121	Governor's Request for Disaster Declaration	13 CFR 123.1101	7-31-90
3245-0123	SBA 888	13 CFR 101.2-7	10-31-88
3245-0125	SBA 898	Pub. L. 92-463	7-31-89
3245-0129	SBA 1238A		8-31-89

Current OMB Control No.	Information collection requirement	Legal authority	Expiration date
3245-0130	SBA 1238		8-31-89
3245-0131	SBA 172	Agency's Participant Handbook	7-31-89
3245-0132	SBA 1149		11-30-90
3245-0133	SBA 2014A	Pub. L. 95-454	9-30-89
3245-0134	SBA 1369	13 CFR 101.2-7	9-30-89
3245-0135	SBA 1202	13 CFR 101.2-7	8-31-89
3245-0136	SBA 987	13 CFR 123.1	8-31-89
3245-0137	SBA Contract Requirements	OMB Circulars A-110; A-21; A-102; A-122	8-31-89
3245-0140	SBA Grants Management	OMB Circulars A-110; A-102; A-122; SOP 00 11	9-30-88
	Reporting and Recordkeeping Requirements SBA 1222, 1223, 1224		
3245-0143	Request for Eligibility Reconsideration	13 CFR Part 124	1-31-90
3245-0144	SBA 1017	13 CFR Part 124	1-30-90
3245-0145	Notice of Change in Ownership	13 CFR Part 124	1-31-90
3245-0146	SBA Request for Approval of Joint Venture Agreement.	13 CFR Part 124	1-31-90
3245-0147	Request for Fixed Program Participation Term (FPPT) Extensions.	13 CFR Part 124	1-31-90
3245-0148	Request for Advance Payment and Schedule of Advance Payment Requirements.	13 CFR Part 124	1-31-90
3245-0149	Request for Business Development Expense	13 CFR Part 124	1-31-90
3245-0151	Submission of Business Financial Statement	13 CFR Part 124	1-31-90
3245-0157	SBA 1386	Pub. L. 97-219	11-30-89
3245-0158	SBA 1183		4-30-90
3245-0159	SBA 712		4-30-90
3245-0160	SBA 149	13 CFR 122.15	9-30-90
3245-0164	Liquidation Activities	41 CFR Part 5	4-30-90
3245-0168	Small Business Institute Counseling Case Report.	13 CFR 101.2-7	4-30-90
3245-0169	SBDC Quarterly and Financial Reports	13 CFR 101.2-7	2-28-90
3245-0171	Nominate A Small Business Person or Advocate of the Year.		11-30-88
3245-0172	SBA 1405	13 CFR 107.1101	2-28-90
3245-0176	SBA 747	13 CFR Parts 112, 113, and 117	5-31-90
3245-0178	SBA 912		5-31-90
3245-0183	SBA 1419	13 CFR 101.2-7	7-31-90
3245-0185	SBA 1085 SBA 1086 SBA 1502	13 CFR Part 120	8-31-90
3245-0186	Economic Research Project Office of Advocacy, "Informal Investor Survey in the Eastern Great Lakes"	Pub. L. 94-305	8-31-88
3245-0188	SBA 413	15 U.S.C. 631	10-31-89
3245-0189	Business Loan Reconsideration Request	13 CFR Part 122	9-30-90
3245-0190	SBA 1347	13 CFR Part 122	11-30-90
3245-0191	Reporting and Recordkeeping Requirements	13 CFR Parts 120 and 122	10-31-90
3245-0192	Other Development Company Reporting Requirements.	13 CFR Part 108	6-30-90
3245-0193	SBA 1429	13 CFR Part 108	4-30-90
3245-0194	SBA 1434	13 CFR 101.2-7	1-31-88
3245-0196	Borrower Reports, Records and Requests	13 CFR Part 122	10-31-90
3245-0199	Information Submitted by the Federal Agencies Participating in the SBIR Program to Small Business Administration for the SBIR Annual Report to Congress.		4-30-89
3245-0200	SBA 1050	13 CFR Parts 120 and 122	11-30-90
3245-0201	SBA 147 SBA 148 SBA 159 SBA 160 SBA 160A SBA 529B SBA 928 SBA 1059	13 CFR Parts 120 and 122	11-30-90
3245-0202	SBA 1010H	Pub. L. 95-507	1-31-91
3245-0203	SBA 104A		11-30-90
3245-0204	SBA 1449	Pub. L. 95-89	1-31-88
3245-0205	SBA 1450	13 CFR Part 124	8-31-90
3245-0212	SBA 1088	Pub. L. 98-352	9-30-90

Current OMB Control No.	Information collection requirement	Legal authority	Expiration date
3245-0213	SBA 1454 SBA 1455	13 CFR Part 122	12-31-8
3245-0215	SBA 1479		7-31-8
3245-0217	Measuring the Costs of Producing Bank Services in a Deregulated Environment		3-31-8
3245-0218	SBA 1482	Pub. L. 96-481	10-31-8
3245-0221	SBA 1496	13 CFR 101.2-7	1-31-9
3245-0224	Erroneous Penalties Assessed by IRS Associated with Payroll Taxes	Pub. L. 94-305	1-31-8
3245-0225	SBA 1531	Pub. L. 98-577 15 U.S.C. 647b	2-29-9
3245-0226	SBA 1538	Pub. L. 95-507	10-31-8
3245-0227	SBA 1539	Pub. L. 95-507	10-31-8
3245-0228	SBA 1540	Pub. L. 95-507	5-31-8
3245-0229	For Profit Cosponsored Training Program		6-30-8
3245-0232	SBA 1547	13 CFR 122.5.2 15 U.S.C. 631	7-31-8
3245-0234	Prebusiness Workshop Evaluation	13 CFR 101.2-7c	9-30-8
3245-0235	SBA 1551	13 CFR 129.2	9-30-8
3245-0236	Prompt Payment—Does Government Pay on Time?	Pub. L. 94-305 15 U.S.C. 634(b)(5)	9-30-8
3245-0237	SBA Recruitment Mailing List Survey		4-30-8
3245-0238	SBA 1553	13 CFR 122.5-2 15 U.S.C. 631	10-31-9
3245-0241	Procurement—Related Paperwork Barriers to Small Business.	Pub. L. 94-305 15 U.S.C. 634(b)(5)	8-31-8
3245-0243	SBA 641A	13 CFR 101.2-7c	12-31-9

[48 FR 395, Jan. 5, 1983, as amended at 48 FR 28080, June 20, 1983; 53 FR 9612, Mar. 24, 1988]

PART 134—OFFICE OF HEARINGS AND APPEALS

Subpart A—General

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AUTHORITY: 15 U.S.C. 634(b)(7).

SOURCE: 49 FR 33630, Aug. 24, 1984, unless otherwise noted.

Subpart A—General

§ 134.1 Authority and implementation policy.

(a) The Office of Hearings and Appeals is established pursuant to the authority set forth in the Small Business Act, 15 U.S.C. 631 *et seq.*, as implemented in § 101.2-8 of this chapter. Delegations of Authority by the Administrator to the Assistant Administrator for the Office of Hearings and Appeals are set forth in 48 FR 29646 (June 27, 1983).

(b) The regulations in this part represent a single, consolidated set of rules governing the conduct of all proceedings within the jurisdiction of the Office of Hearings and Appeals, except size determination and product or service classification appeals. The size determination and product or service classification appeals are governed by the rules set forth in § 121.11 of this chapter. Because the rules in this part govern the conduct of a wide range of proceedings extending from internal Agency matters involving Small Business Administration employees to external matters involving constituents of the Agency or organizations cooperating with or regulated by the Agency, they are necessarily comprehensive in scope. They provide for a range of practice extending from the informal to the formal. It is specifically recognized and contemplated that not all of these rules will be applied in all types of cases.

(c) The full panoply of formalities will be available, as appropriate, in individual cases required by law to be heard on the record in accordance with the Administrative Procedure Act (APA), the Small Business Act, as amended, the Small Business Investment Act of 1958, as amended, and ony other applicable statutes. In these cases, the Administrative Law Judge will determine the extent of such formalities that is appropriate upon consideration of the issues and nature of the case and the attendant requirements of due process of law. Of course, the legitimate needs of the parties will also be considered in this respect.

(d) In cases involving external parties, but which are not required to be heard on the record in accordance with the APA and other applicable statutes, a lesser degree of formality will normally be deemed to be appropriate. The Administrative Judge assigned will determine the extent of such formalities upon consideration of the issues and nature of the case, the due process requirements and the legitimate needs of the parties.

(e) In cases involving internal Agency matters, there is a presumption in favor of such informality as may best achieve essential fairness to all parties without undue resort to the formality that may be appropriate in certain of the external cases. The Administrative Judge assigned will determine which procedures in these cases will best meet the requirements of fairness, and will retain authority to resort to appropriate formality in cases in which the due process requirements, fairness, and the needs of the parties warrant such action.

(f) The principal areas where variation in practice is expected to occur are those addressed in § 134.19, concerning oral hearings, and in § 134.24, concerning discovery. The following general policies are, therefore, stated for the purpose of providing guidance to the judges and all parties, but this guidance retains a measure of flexibility due to the differences in types of cases and the circumstances attending each case.

(g) It is emphasized that the standard stated in § 134.19(b) shall be applicable in all decisions respecting the grant of an oral hearing, irrespective of the type of case. No oral hearing shall be granted unless there is genuine dispute as to a material fact of decisional significance that cannot be resolved except by confrontation of witnesses. Section 134.19 authorizes the presiding judge to determine whether or not an oral hearing is appropriate in the circumstances of each case. This is a determination that, appropriately, is reserved to the judge to assure fairness and reasonable opportunity to be heard.

(1) In APA proceedings, the requirement of an opportunity for an oral hearing on the record raises a presumption in favor of an oral hearing, where requested, although resolution of APA cases on the basis of a written record is encouraged, where appropriate.

(2) In non-APA external cases involving sanctions imposed or proposed by the Agency, the judge shall have discretion to grant an oral hearing where there is a genuine dispute as to a material fact of decisional significance that cannot be resolved except by confrontation of witnesses. The presumption is that, while due process considerations may warrant oral hearings in many sanction-type non-APA cases, the fact that Congress has not

required such cases to be heard on the record with full APA formality means that the requirements of due process of law may also be met in a decisional process not requiring an oral hearing but preserving the opportunity to be heard through written submissions. These sanction-type cases involving external parties, which are not required by law to be heard on the record and to conform to APA requirements, are enumerated in paragraphs (a), (g)-(j), and (l) of § 134.3.

(3) In internal Agency cases, enumerated in § 134.3 (e) and (f), it is recognized that, as a matter of law, there is not a right to the same full array of due process elements as may be appropriate in the external cases. Nevertheless, the same standard shall be applied in determining whether an oral hearing is necessary in any individual case. In making this determination, the judge may also assess the importance of the disputed fact of decisional significance in terms of the Agency's proper interest in resolving internal matters in ways consistent with sound budgetary and internal management practices. For example, it is not contemplated that grievances will ordinarily require oral hearings.

(h) Section 134.24 provides for discovery procedures to be available, in the judge's discretion and upon motion, including requests for admissions, interrogatories, depositions, and requests for production of documents. This section contemplates that, in the more formal proceedings, the individual circumstances of any case may warrant discovery. However, consistent with the three basic classes of cases recognized above (APA, non-APA external cases, and internal Agency cases), it is also contemplated that formal discovery will be granted sparingly in internal Agency cases.

(1) In internal Agency cases, the practice of holding pre-hearing conferences for purposes of identifying the issues and providing appropriate information to all parties, through exchange of documents or otherwise, shall be favored by the judge irrespective of whether an oral hearing is granted. It should be noted that under § 134.27 the judge has available effective measures for directing or ordering the parties to cooperate in a timely and efficient process of defining and resolving the issues.

(2) In the external cases, discovery beyond that which may result from pre-hearing conferences is more likely to be appropriate in some cases. This, again, is a matter that must remain within the discretion of the judge. The judge shall be guided by consideration of the extent and formality of the due process required by the circumstances of the case. In neither the APA nor non-APA external cases will discovery be a matter of right. It may be granted regarding any matter not privileged that is relevant to the subject matter of the proceeding. In the non-APA external cases, Agency policy more strongly favors the use of pre-hearing conferences and orders to achieve the basic purposes of discovery, but this policy also preserves the discretion of the judge to grant discovery where it is appropriate.

§ 134.2 Definitions and miscellaneous rules.

(a) *Definitions.* As used in this part:

(1) "Act" means the Small Business
Act, as amended, 15 U.S.C. 631 *et seq*

(2) "Address" means the record address of a party, including the stree
location (in addition to a postal bo
number, where used), and postal zi
code and the telephone number.

(3) "Administrator" means the Administrator of the Agency.

(4) "Agency" means the Unite
States Small Business Administratio

(5) "Day" means a calendar da
unless otherwise indicated.

(6) "Determination" means onl
those appealable written Agency a
tions that are subject to the jurisdi
tion of the Office of Hearings and A
peals as enumerated in § 134.3 of th
part.

(7) "Judge" means an Administrati
Law Judge or an Administrative Jud
of the Office of Hearings and Appe
appointed by the Administrator, or
delegatee, to serve the Agency in th
capacity.

(8) "Hearing" means the presen
tion of evidence, whether oral or w
ten, for the record.

(9) "Office" means the Office of Hearings and Appeals of the Small Business Administration.

(10) "Party" means the petitioner, grievant, complainant, respondent, intervenor, or Agency (when appropriate).

(11) "Petition," as used in § 134.11 of this part, includes an appeal from any written Agency determination (other than a size determination or product or service classification), a grievance, a complaint, or a request for initiation of a proceeding authorized in this chapter. Appeals from size determinations and product or service classifications are governed by Part 121 of this chapter.

(12) "Petitioner" means the Agency or any person or legal entity entitled to initiate a proceeding under the statutes and regulations administered by the Agency.

(13) "Pleadings" includes all written submissions (other than documentary or testimonial evidence) that are intended to be included in, and considered a part of, the record in any proceeding conducted pursuant to this part.

(14) "Respondent" means the Agency or any person or legal entity against whom a proceeding has been instituted pursuant to this part.

(15) "Agency reviewing official," as used in §§ 134.32(b) and 134.34, concerning initial decisions, means: The Administrator, in those proceedings specified in § 134.32(b) (1), (3) and (8); the Associate Administrator for Minority Small Business and Capital Ownership Development, in those proceedings specified in § 134.32(b)(2); and the Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office, in those proceedings specified in § 134.32(b) (4), (5), (6), (7) and (9).

(16) "SBIA" means the Small Business Investment Act of 1958, 15 U.S.C. 661 *et seq.*

(17) "SOP" means Standard Operating Procedure.

(b) *Miscellaneous Rules.* As used in this part:

(1) Singular nouns, pronouns, and verbs shall be read to include the plural, as appropriate.

(2) In computing the time set forth for the filing of pleadings or for compliance with orders issued pursuant to this part, the day from which the time is computed is not counted. The last day of the designated time period is counted, unless it is a Saturday, Sunday, or a Federal holiday, in which event the next business day following the Saturday, Sunday, or Federal holiday is counted.

§ 134.3 Jurisdiction and function.

The Office will conduct the following proceedings in accordance with the Act, the SBIA, other relevant statutes, the rules set forth in this part and other applicable regulations:

(a) Contractor debarment and suspension proceedings, pursuant to Office of Federal Procurement Policy Letter No. 82-1 and § 125.11 of this chapter;

(b) Proceedings relative to revocation or suspension of Small Business Investment Company licenses; cease and desist orders; and removal or suspension of directors and officers of licensees of Small Business Investment Companies, pursuant to the SBIA and Part 107 of this chapter;

(c) Proceedings to terminate participants from the Act's Section 8(a) Minority Small Business and Capital Ownership Development Assistance Program, pursuant to 15 U.S.C. 637(a), and Part 124 of this chapter;

(d) Proceedings relative to violations of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) *et seq.*, and Parts 112 or 113 of this chapter and violations of the Equal Credit Opportunity Act of 1974, 15 U.S.C. 1601 *et seq.;* section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; Title VIII of the Civil Rights Act of 1968; Title IX of the Education Amendment of 1972, as amended, 20 U.S.C. 1681 *et seq.*; and section 4(b) of the Act, 15 U.S.C. 633(b), pursuant to Part 113 of this chapter, alleged by a person who claims to have been excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any financial assistance activities of the Agency;

(e) Proceedings relative to employee formal stage grievances, pursuant to Agency SOP 37-71;

(f) Arbitrations arising under any pertinent labor agreement where all parties agree that the matter should be heard by the Office;

(g) Proceedings relative to the privilege of any applicant or agent to appear before the Agency, pursuant to 15 U.S.C. 634 and 642 *et seq.* and Part 103 of this chapter;

(h) Proceedings relative to the eligibility of, or preferred or certified status of, any bank or non-bank lender to continue to participate in Agency loan programs, once they have begun to do so, pursuant to 15 U.S.C. 634 (b)(6) *et seq.* and Parts 120 and 122 of this chapter;

(i) Proceedings relative to the termination of surety bond program participants, pursuant to 15 U.S.C. 694(a) *et seq.* and Part 115 of this chapter;

(j) Proceedings relative to the rights, privileges or obligations of development companies, pursuant to sections 501, 502, and 503 of the SBIA, 15 U.S.C. 687 *et seq.* and Part 108 of this chapter;

(k) Proceedings to determine allowance of costs and fees, pursuant to the Equal Access to Justice Act, 5 U.S.C. 504 and Part 132 of this chapter;

(l) Proceedings relative to debarment from appearance before the Agency because of post-employment restrictions, pursuant to 18 U.S.C. 207(a) *et seq.* and Part 105 of this chapter;

(m) Proceedings relative to the collection of debts owed to the Agency and to the United States, pursuant to the Debt Collection Act of 1982 and Part 140 of this chapter.

(n) Such other hearing, determination or appeal proceedings, other than those regarding size determinations or product or service classifications, as may be referred to the Office by appropriate authority.

§ 134.4 Waiver and interpretation of rules.

(a) *Waiver.* In the exercise of discretion and for good cause shown, the judge may, after notice to all parties, waive any time limit set forth in this part, other than those time limits in § 134.11(a) of this part for filing petitions, unless such time is limited by statute.

(b) *Interpretation.* The rules set forth in this part shall be liberally construed to carry out the purposes of the Act, the SBIA, and rules administered by the Agency, and to secure just and prompt determinations in all proceedings.

Subpart B—Rules of Practice

§ 134.10 Applicability.

The rules set forth in this subpart shall apply to proceedings regarding those matters specified in § 134.3 of this part.

§ 134.11 Commencement proceedings.

(a) *By Petition.* A proceeding may be commenced by a party other than the Agency by serving and filing a petition in accordance with §§ 134.14 and 134.15 of this part.

(1) The petition shall be in writing, shall be affirmed in accordance with § 134.15, and shall contain the following:

(i) The legal authority and jurisdiction for the proceeding;

(ii) A clear and concise statement setting forth the factual basis for the commencement of the proceeding;

(iii) A statement of the relief requested; and

(iv) The signature of the petitioner or authorized representative and his or her address.

(2) Except as provided in paragraphs (a)(3), (4), (5), and (6) of this section, a petition shall be served and filed no later than 30 days after the date of issuance of the written Agency action to which it applies.

(3) In the case of complaints alleging discrimination pursuant to §§108.502-1(k) and 122.2(d)(3) of this chapter, a petition shall be filed no later than 90 days after the alleged discrimination occurs.

(4) In the case of applications for an award of fees pursuant to Part 132 of this chapter, a petition shall be filed no later than 30 days after the decision to which it applies becomes final in accordance with § 134.32 of this part.

(5) Except in those cases where such time limit is waived by the judge for good cause shown, a formal employee grievance petition shall be filed no later than 20 days after issuance of the deciding official's decision to which it applies or after expiration of the time limit set forth in Agency SOP 37-71 for issuing such decision, whichever is earlier.

(6) In the case of debt collection proceedings pursuant to Part 140 of this chapter, a petition shall be filed no later than 15 days after receipt of a notice of indebtedness and intention to collect such debt by salary or administrative offset.

(b) *By Order to Show Cause.* The Agency will commence a proceeding by issuing to the respondent an appropriate written order to show cause or notice containing the information set forth in paragraph (a)(1) of this section.

(c) *Motion for More Definite Statement.* Where a reasonable showing is made by a respondent that he or she cannot frame a responsive answer based on the allegations contained in the petition, order to show cause or notice, the respondent may move for a more definite statement of the allegations before filing an answer. Such motion shall be filed no later than 15 days after the service of the petition, order to show cause or notice and shall identify the defects complained of and the details desired. The filing of such motion shall stay the time for filing an answer set forth in § 134.12 of this part.

§ 134.12 Answer.

(a) *Time for filing.* The answer to a petition, order to show cause or notice shall be served and filed in accordance with §§134.14 and 134.15 of this part, no later than 30 days after the service of such petition, order to show cause or notice or an amendment thereto made in response to a motion for more definite statement pursuant to § 134.11(c) of this part or an amendment made pursuant to § 134.13.

(b) *Contents.* The answer to a petition, order to show cause or notice shall contain the following:

(1) A specific admission or denial of each factual allegation contained in the petition, order to show cause or notice or a statement that the respondent denies knowledge or information sufficient to determine the truth of the allegation, which will then be deemed denied;

(2) A concise statement of the facts supporting any affirmative defenses raised; and

(3) The signature of the respondent or authorized representative and his or her address.

(c) *Failure to Deny.* Allegations in the petition, order to show cause or notice not answered in accordance with paragraph (b)(1) of this section shall be deemed to be admitted.

(d) *Admission of Allegations.* An answer that admits all factual allegations shall constitute a waiver of the right to present evidence or witnesses pursuant to § 134.28(c) of this chapter but the right to further participation in the proceeding shall continue and questions of law and Agency precedent may be addressed.

(e) *Default.* Failure of the respondent to file an answer within the time set forth in paragraph (a) of this section shall constitute a default, and the judge will, without further notice, render an appropriate decision. The respondent shall have no right to participate further in the proceeding.

§ 134.13 Amendments and supplemental pleadings.

(a) *Amendments by Leave.* If a determination of a controversy on the merits will be facilitated thereby, the judge may, upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, allow appropriate amendments to pleadings, except that an application for amendment of an order to show cause may be allowed only if the amendment is reasonably within the scope of the proceeding initiated by the original order to show cause.

(b) *Conformance to Evidence.* When issues not raised by the pleadings, but reasonably within the scope of the proceeding initiated by the original petition, order to show cause or notice, are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and such amendments of the pleadings as may be necessary to make them conform to the evidence and to raise such issues shall be allowed at any time.

(c) *Supplemental Pleadings.* The judge may, upon reasonable notice and upon such terms as are just, permit service of a supplemental pleading setting forth transactions, occurrences, or events that have taken place since the date of the pleading sought to be supplemented and that are relevant to any of the issues in the proceeding.

§ 134.14 Filing and service of pleadings.

(a) *Filing.* Except as otherwise specifically provided in this part, an original and one copy of all pleadings shall be filed with the Office by mail addressed to: Office of Hearings and Appeals, Small Business Administration, Washington, D.C. 20416, or by personal delivery to Suite 300, 2100 K Street, NW., Washington, D.C. The date of filing shall be the date the pleading is received by the Office.

(b) *Service.* Except as provided in Agency SOP 37-71 relating to formal employee grievances, each party shall be responsible for service of all its pleadings upon all other parties or their authorized representatives. Service shall be complete upon personal delivery or upon mailing first class postage prepaid, to the record address, unless otherwise ordered by the judge. All pleadings shall include a signed certificate stating how and when service was made.

(c) *Excision of Confidential Information.* Any information in pleadings that constitutes proprietary or confidential information need not be served upon other parties so long as such deletions are identifed and described in copies served upon such other parties. Such excisions may be the subject of a discovery motion pursuant to § 134.24 of this part and may be released under a protective order, where the judge deems appropriate.

(d) *Waiver of Rights to Service.* A party's failure to include a complete address, or to advise the Office of a changed address, shall constitute a waiver of the right to notice and service as provided in this part.

§ 134.15 Form requirements for pleadings.

Except as provided in Agency SOP 37-71, pleadings shall be typewritten on 8½ by 11-inch opaque paper, shall contain a caption that sufficiently identifies the parties, and shall be signed by an authorized person. Petitions, orders to show cause (except those signed by the Administrator), answers, interrogatories, and answers to interrogatories shall also contain a statement by the signatory stating as follows: "I have read this document and, under penalty of law and the sanctions imposed under 18 U.S.C. 1001, of which I am aware, I affirm that, to the best of my knowledge, the statements made herein are true and correct, and that this document is not being filed for the purpose of delay or harassment."

§ 134.16 Appearances.

(a) *Qualifications.* Except in arbitrations and in proceedings involving formal employee grievances (which are governed by the provisions of Agency SOP 37-71), parties to a proceeding may be represented only by a member in good standing of the bar of a Federal court or the highest court of any state or territory of the United States, or may represent themselves (appear *pro se*). A member of a partnership may represent the partnership and an authorized officer of a corporation, trust or association may represent the corporation, trust or association.

(b) *Notice of appearance.* An attorney or other representative appearing on behalf of a party shall serve and file a written notice of appearance in accordance with §§ 134.14 and 134.15 of this part.

(c) *Restrictions as to Former Employees.* No former employee of the Agency shall appear as attorney for any party in any proceeding, or represent a party in any capacity, in violation of §§ 105.401, 105.402, 105.405 or 105.406 of this chapter.

(d) *Standards of Conduct.* Attorneys appearing in any proceeding shall conform to the standards of ethical conduct required in the Courts of the United States.

(e) *Withdrawal of Appearance.* An attorney or other representative wishing to withdraw from a proceeding shall serve and file a written motion for withdrawal of appearance in accordance with §§ 134.14 and 134.15 of this part. Except in arbitrations or in proceedings involving formal employee grievances, in which a written request for withdrawal by either the grievant or the representative shall be automatically granted, withdrawal of appearance will be allowed by the judge, for good cause shown.

§ 134.17 Intervention.

(a) *Intervention as of Right.* The following rules shall apply to those proceedings in which an oral hearing is conducted pursuant to § 134.19 of this part, provided that the notice or motion is filed prior to the commencement of the oral hearing.

(1) The Agency may intervene, as a matter of right, by serving and filing a notice of intervention in accordance with § 134.21(a) of this part.

(2) Any individual partnership, association, corporation, or other agency shall serve and file a motion to intervene in accordance with § 134.21(a) of this part. The motion shall contain a brief statement of the movant's relationship to an interest in the proceeding. The judge shall grant leave to intervene, to such extent and upon such terms as are appropriate, upon finding that:

(i) There is a statutory right to intervene; or

(ii) The movant has an immediate property, financial, or other justiciable interest; the relief requested in the proceeding will affect such interest; and other means are not available to protect the movant's interest.

(b) *Discretionary intervention.* After commencement of an oral hearing or at any stage of a proceeding for which no oral hearing has been provided, the Agency or any other agency, individual, partnership, association or corporation may seek to intervene by serving and filing a motion in accordance with § 134.21(a) of this part. The motion shall contain a brief statement of the movant's interest in the proceeding. The judge may grant leave to intervene, to such an extent and upon such terms as appropriate, if:

(1) The movant's interest will not be represented by the existing parties;

(2) The movant's participation may reasonably be expected to assist in the development of a proper record; and

(3) The movant's participation will not broaden the issues, resulting in prejudicial delay of the proceeding.

§ 134.18 Judges.

(a) *Assignment of Judge.* Proceedings subject to the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, shall be assigned to the Chief Administrative Law Judge or, by him or her, to another Administrative Law Judge. All other proceedings subject to this Part shall be assigned to an Administrative Judge or to an Administrative Law Judge. The Office will notify all parties of the identity of the judge assigned.

(b) *Duties and Powers of Judges.* The judge will assume jurisdiction upon assignment to a proceeding and shall have the power to:

(1) Administer oaths and affirmations;

(2) Issue subpoenas and protective orders;

(3) Rule upon motions to quash or to modify subpoenas;

(4) Rule upon offers of proof and receive evidence;

(5) Take or cause depositions to be taken and determine their scope;

(6) Hold pre-hearing and other conferences for the settlement, simplification or clarification of the issues, and for other appropriate purposes;

(7) Dispose of procedural requests and motions;

(8) Regulate the course of the proceeding, require an oral hearing or telephone conference, if appropriate, fix the time and place of such oral hearing or conference, and exclude persons from such oral hearing or conference for contumacious conduct;

(9) Call and examine witnesses and introduce documentary or other evidence;

(10) Require the parties to state their respective positions concerning any issue in the proceeding at any time;

(11) Issue decisions and orders; and

(12) Take any other appropriate action authorized by this part or the Delegations of Authority to the Office.

(c) *Protective orders.* Upon motion by a party, or by any person from whom discovery is sought, for good cause shown, or upon his or her own motion, the judge may issue such orders as justice requires to protect a party or person from harassment, embarrassment, oppression, or undue burden or expense, or from breach of confidentiality of material or information warranting protection.

(d) *Recusal.* The following rules shall apply regarding recusal of judges in proceedings under this part:

(1) A judge shall recuse himself or herself from a proceeding on his or her own initiative whenever such judge deems himself or herself to be disqualified.

(2) At any time following assignment of the judge and before issuance of the judge's decision under § 134.32 of this part, any party may request the judge to recuse himself or herself on the grounds of personal bias or disqualification, by serving and filing a motion, promptly upon the discovery of the alleged facts, with an affidavit setting forth, in detail, the matters alleged to constitute grounds for disqualification.

(3) If, in the opinion of the judge, the affidavit is sufficient on its face, the judge shall recuse himself or herself. If the judge does not recuse himself or herself, the judge shall so rule, state the grounds for the ruling, and continue with the proceeding or issue the decision. A denial of a request for recusal may be appealed to the Assistant Administrator or Chief Administrative Law Judge of the Office, but such appeal shall not stay the proceeding.

(e) *Interference.* No officer, employee or agent of the Agency or other person or party shall interfere with a judge's decisional independence. If the judge has a question as to whether there has been a prohibited interference with his or her independence, the matter shall be made part of the record in the proceeding on notice to the parties.

(f) *Substitution of Judge.* In the event of substitution of a new judge for the one originally assigned, any motion predicated upon such substitution shall be made no later than seven days thereafter.

§ 134.19 Oral hearings.

(a) *Request for Oral Hearing.* Any party may request the opportunity for an oral hearing to adduce testimony to support or refute any fact alleged in a pleading. The request for an oral hearing shall be served and filed in accordance with § 134.21(a) no later than 20 days after the service of the answer to such pleading.

(b) *Notice of Oral Hearing.* If a judge grants a request for an oral hearing, or makes his or her own determination that one is necessary, because of a genuine dispute as to a material fact of decisional significance that cannot be resolved except by confrontation of witnesses, he or she will so advise the parties and, with appropriate notice, designate the time and place for such hearing and the issues to be addressed. The judge shall give due regard to the convenience and necessity of the parties or their authorized representatives in designating the time and place of the oral hearing and may conduct such hearing by telephone conference in appropriate circumstances.

(c) *Postponements.* Postponement of an oral hearing will be allowed only upon good cause shown or upon agreement of the parties, concurred in by the judge. Except in unusual circumstances, no motion for a postponement will be considered unless it is served and filed in accordance with § 134.21(a) at least seven days in advance of the date designated for the oral hearing.

(d) *Failure to Appear.* The failure of a party to appear for an oral hearing or to participate in a prearranged telephone conference, unless excused by the judge for good cause shown before or after the fact, may be deemed to be a waiver by that party of all rights to participate further in the proceeding.

(e) *Public Access to Oral Hearing* All oral hearings, except those involv

ng employee grievances, shall be
ublic unless, for good cause shown, a
osed hearing is ordered by the judge.

(f) *Witnesses.* Subpoenaed witnesses
nall be paid the same fees and mile-
ge costs as are paid in the Federal
ourts. The party who requests the
itness's presence shall be responsible
or paying such fees. Except in the
ase of subpoenas issued on behalf of a
ederal government entity, one day's
ees and mileage costs shall be ten-
ered to the subpoenaed witness at
ne time of service of the subpoena.
ubsequent entitlements shall be pay-
ble following the appearance and re-
ease of the witness.

(g) *Recording and Transcripts.* Oral
earings will be recorded verbatim.
he judge may make a final, initial or
ecommended decision without having
n official transcript of the record,
nless a transcript is required pursu-
nt to statute or to rules set forth in
nis chapter. A transcript or copies of
recording may be obtained by the
arties upon request to the recording
ervice. Any fees in connection there-
ith shall be the responsibility of the
arties.

134.20 Prehearing conferences.

(a) *Nature of Prehearing Conference.*
he judge, upon motion of any party
r upon his or her own motion, may
irect all parties or their counsel to
onfer and consider:

(1) Simplification, clarification, com-
romise, or settlement of the issues;

(2) Necessity and desirability of
nendments to the pleadings;

(3) Stipulations, admissions of fact,
nd the contents, admissibility, and
uthenticity of documents;

(4) Where an oral hearing is in-
olved, expedition in the presentation
evidence, including, but not limited
, restriction of the number of wit-
esses;

(5) A statement of the issues as they
nen appear;

(6) A proposed plan and schedule of
scovery;

(7) Any limitations proposed to be
aced on discovery; and

(8) Such other matters as may aid in
ne orderly disposition of the proceed-
g, including disclosure of the names
witnesses and furnishing for inspection or copying of non-privileged documents, papers, books, or other physical exhibits, which constitute or contain evidence relevant to the subject matter involved and which are in the possession, custody, or control of any party to the proceeding.

(b) *Record of Prehearing Conference.* A pre-hearing conference may be conducted by telephone or in person at a time and place convenient to all parties, and, in the discretion of the judge, may be recorded verbatim.

(c) *Order.* After such prehearing conference, the judge will issue an order that recites the actions taken and the agreements made. Such order shall control the subsequent course of the proceeding, unless modified.

§ 134.21 Motions.

(a) *Filing and Service.* Except where the judge permits an oral motion to be made at a conference, or on the record in an oral hearing or telephone conference, all motions shall be written, shall be filed with the Office, and shall be served upon all parties in accordance with §§ 134.14 and 134.15 of this part.

(b) *Contents of Motion.* All motions shall state the particular order, ruling, or action requested and the grounds and authority therefor.

(c) *Answer and 'Filing of Briefs.* No later than ten days after the service of any motion, or within such time as the judge may direct for good cause shown, the opposing party shall serve and file an answer to the motion, or be deemed to have consented to the relief sought. The moving party shall have no right to reply, except as permitted by the judge. No oral argument will be heard on motions unless the judge directs otherwise. Written briefs may be filed with motions and with answers thereto.

(d) *Disposition of Motion.* All motions shall be ruled upon by the judge assigned, unless the judge is unavailable. In that event, if circumstances warrant, such motion may be acted upon by the Assistant Administrator or the Chief Administrative Law Judge of the Office, as appropriate.

§ 134.22 Summary decision.

(a) *Motion for Summary Decision.* Any party who believes that there is no genuine issue of material fact of decisional significance, and that he or she is entitled to a decision as a matter of law, may move for a summary decision as to all or any part of the proceeding.

(b) *Contents of Motion.* The motion shall include a statement of the facts as to which the moving party contends there is no genuine issue, shall be supported by the pleadings, and may be accompanied by affidavits and a legal memorandum or brief.

(c) *Answer to Motion.* No later than 20 days after the service of the motion, any other party may serve and file an opposition thereto, and may countermove for summary decision in his or her favor.

(d) *Order.* When a motion for summary decision is granted, the judge will issue an appropriate order as to the issues so determined. If the motion is denied, in whole or in part, the judge will issue an order specifying those facts about which there is no genuine issue and those material facts of decisional significance found to be controverted in good faith. Further proceedings will then be ordered.

§ 134.23 Interlocutory appeals.

(a) *General Rules.* An interlocutory appeal is an appeal of a ruling made by a judge during the course of the proceeding, other than a ruling on a request for recusal or a ruling that is fully dispositive of the proceeding. A motion for leave to take an interlocutory appeal will not be entertained in those proceedings specified in § 134.32(a) (2) and (3) of this part, in which the judge's decision is the final decision of the Agency, or in formal employee grievances. In all other proceedings, an interlocutory appeal shall not be permitted unless, upon motion by a party, or upon the judge's determination, the judge certifies that the question presented is immediately appealable. Interlocutory appeals from a ruling by a judge will be decided by the Agency reviewing official identified in the applicable substantive regulations governing the proceeding.

(b) *Motion for Certification.* A party seeking leave to take an interlocutory appeal shall file a motion for certification no later than 10 days after issuance of the ruling to which the motion applies. The motion shall include arguments in support of both the certification and the relief requested on the merits.

(c) *Basis for Certification.* The judge will certify a ruling for interlocutory review only if he or she determines that:

(1) The ruling involves an important question of law or policy regarding which there are substantial grounds for a difference of opinion; and

(2) An immediate review will materially expedite completion of the proceeding or denial of review would cause undue hardship to a party or the public

(d) *Order.* The judge will issue expeditiously an order granting or denying a motion for certification and, if certification is granted, will refer the record to the Agency reviewing official. If certification is denied, the issue may be raised in any appeal of the judge's decision on the merits.

(e) *Stay of Proceeding.* A stay of the proceeding, while an interlocutory appeal is pending, shall be at the discretion of the judge.

§ 134.24 Discovery.

In the judge's discretion, and upon motion, a party may obtain discovery in the form of requests for admissions, interrogatories, depositions, or requests for production of documents, regarding any matter, not privileged, that is relevant to the subject matter of the proceeding. It is not a ground for objection that the information sought will be inadmissible, if it appears reasonably calculated to lead to the discovery of admissible evidence. The judge will ordinarily limit the length of time allowed for discovery consistent with the exigencies of the proceeding.

§ 134.25 Subpoenas.

(a) *Scope.* A request for the issuance of a subpoena requiring a witness to appear and testify at a specific place and time or production of document shall be made to the judge, except that subpoenas shall not be authorized for any proceeding relative to internal Agency determinations, *e.g.* formal employee grievances and arbitrations.

(b) *Requests.* Requests for subpoenas may be made on the record at the oral hearing or *ex parte* by written application, in triplicate. All requests shall clearly identify the person subpoenaed and shall be supported by a showing of the relevance, scope and materiality of the evidence sought. Requests for a subpoena *duces tecum* shall specify with particularity the books, papers, and documents desired and the facts expected to be provided thereby, and shall be affirmed in accordance with § 134.15 of this part.

(c) *Service.* The following rules shall apply to service of subpoenas:

(1) Service of a subpoena shall be made by any person who is over 18 years of age, or by certified mail, return receipt requested.

(2) Service of a subpoena by a person other than a United States Marshal or Deputy shall be attested by the person making such service. The attesting affidavit shall state the date, time, and method of service.

(3) In the case of service by certified mail, a copy of the document shall be addressed to the person or business entity to be served, at its residence, principal office or place of business. The return receipt shall be proof of service of the document.

(d) *Motion to Quash.* Motions to limit or quash a subpoena shall be served and filed no later than 10 days after receipt of service of the subpoena or by the return date specified. Any response to such motion shall be served and filed within seven days after the service of the motion, unless a shorter time is specified by the judge to meet the exigencies of a particular case. Oral argument on the motion may be heard at the judge's discretion.

§ 134.26 Motions to compel.

Subject to the limitations of § 134.25(a) of this part, and upon reasonable notice to all other parties and persons affected thereby, a party may make a motion for an order compelling discovery or for the production of witnesses or documents. The judge may deny the motion or compel discovery or production and may also issue a protective order, upon the request of the party or person from whom discovery or production is sought or upon his or her own motion.

§ 134.27 Sanctions.

If any party fails to comply with a written or oral order of the judge, the judge may impose appropriate sanctions including, but not limited to:

(a) Drawing an inference in favor of a party regarding the information sought;

(b) Prohibiting the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, evidence relating to the information sought;

(c) Permitting the requesting party to introduce secondary evidence concerning the information sought;

(d) Striking any part of the pleadings of the party failing to comply with such request; or

(e) Taking such other appropriate action as is deemed necessary to serve the ends of justice.

§ 134.28 Evidence.

(a) *Applicability of the Federal Rules of Evidence.* Unless otherwise provided by statute or this part, the Federal Rules of Evidence may be used as a general guide in all proceedings subject to this part.

(b) *Admissibility.* All material, relevant, and otherwise reliable information is admissible, but may be excluded if its probative value is substantially outweighed by unfair prejudice or confusion of the issues, or if it is needlessly cumulative. Introduction of hearsay evidence will be permitted when it is deemed reliable, probative, material and relevant. Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(c) *Parties' Rights to Present Evidence or Witnesses.* The parties shall have the following rights regarding the presentation of evidence and witnesses:

(1) When an oral hearing or a telephone conference has been provided, a party shall be entitled to present his or her case or defense by oral, docu-

mentary and physical evidence, by depositions, and by duly authenticated copies of records and documents, to submit rebuttal evidence, and to conduct reasonable cross-examination.

(2) When no oral hearing or telephone conference has been provided, a party shall be entitled to present his or her case or defense by documentary and physical evidence, by depositions, and by duly authenticated copies of records and documents.

(d) *Objections.* Motions objecting to the admission of evidence, or to the conduct of the proceeding, may be made orally on the record where an oral hearing or telephone conference has been provided, or shall be served and filed in accordance with § 134.21(a) of this part, and shall include a short statement of the grounds therefor. Argument thereon, or briefs or legal memoranda, if requested by the judge, shall be included in the record. Rulings on objections will be made at the time of the objection or prior to the receipt of further evidence, unless the judge orders otherwise, and will be a part of the record. No objections shall be deemed waived by further participation in the proceeding and an automatic exception shall be deemed applicable to every adverse ruling.

(e) *Stipulations.* The parties may, in writing, or orally on the record where an oral hearing or telephone conference has been provided, agree upon any facts or procedures relevant to the proceeding. Such stipulations shall be binding on the parties.

(f) *Exhibits.* All exhibits offered into evidence shall be numbered and marked so as to identify the party offering the exhibit and shall be filed with the judge in accordance with a pre-trial order or, if there is no pre-trial order, no later than seven days prior to the oral hearing or telephone conference. Copies of all such exhibits shall be served simultaneously upon the opposing party in the proceeding. Admission of exhibits not so served shall be within the judge's discretion. Any information that constitutes proprietary or confidential information may be made the subject of a motion for a protective order.

(g) *Offer of proof.* Whenever
dence is excluded by the judge, th
fering party may make an offe
proof of what the party expects t
tablish with respect thereto. In
case of an oral hearing or telepl
conference, if the offer of proof
sists of an oral statement, it sha
included in the record. If the offe
proof consists of an exhibit or o
documentary evidence, it shall
marked for identification and reta
in the record so as to be availabl
consideration by any reviewing
thority.

§ 134.29 Record.

(a) *Docket File.* Upon comme
ment of a proceeding, the matter
be assigned a docket number.
docket file will consist of the peti
order to show cause or notice, all o
pleadings, motions, judge's orders
decisions, evidence admitted into
dence during the proceeding, and
oral hearing or telephone confer
record. Public access to such file s
be permitted as follows:

(1) Except as provided in paragr
(a)(2) of this section, the docket
will be available for public inspec
at the Office during normal busi
hours, and copies of such mat
may be obtained upon payment of
applicable charges;

(2) The following information in
docket file shall not be subjec
public inspection or copying:

(i) Information subject to a pr
tive order issued pursuant
§ 134.18(c) of this part;

(ii) Any proprietary or confide
information the withholding of w
is provided pursuant to § 134.14(
this part or which is identified
contained in the Agency case file
piled prior to commencement of
proceeding; and

(iii) Any other information to w
public access is prohibited by la
regulation.

(b) *Basis for Decision.* The c
ments included in the docket file
suant to paragraph (a) of this se
shall constitute the exclusive re
for decision. Where the decisio
based on official notice of a mat
fact not appearing in the record,

party will, on written request filed no later than seven days following issuance of the decision, be afforded an opportunity to show the contrary.

(c) *Closing of Record.* The record of the proceeding shall be closed in accordance with the following procedures:

(1) When an oral hearing or telephone conference has been provided, the record will be closed at the conclusion of such hearing, unless the judge directs otherwise. After the record has been closed, no additional evidence or argument will be accepted, except upon the grant of a motion to reopen the record under § 134.33 of this part. If a transcript of the hearing is made, corrections may be permitted upon motion made no later than ten days after receipt of the transcript, and corrections will be permitted by the judge only if errors of substance are involved. The judge may, on his or her own motion and on notice to the parties, make such corrections as are deemed necessary. The judge shall make a part of the record any approved corrections to the transcript and any motions and rulings made after the closing of the record.

(2) When no oral hearing has been provided, the record will be closed on the date set by the judge as the final date for the receipt of submissions from the parties. After the record has been closed, no additional documents will be accepted except upon grant of a motion to reopen the record under § 134.33 of this part. The judge shall make a part of the record any motions and rulings made after the closing of the record.

(d) *Certification of Record.* Upon the closing of the record, the judge shall certify and file with the Office a true and correct copy of the entire record consisting of the recording or transcript of testimony, if any, and all exhibits, pleadings, orders, papers, and requests filed in the proceeding.

§ 134.30 Proposed findings, conclusions, and order.

(a) *Request to File.* Upon request, in those proceedings where such filing is not a matter of right, the judge may allow the parties to file proposed findings of fact and conclusions of law and a proposed order accompanied by a supporting brief.

(b) *Required by Judge.* In any proceeding, the judge may, in his or her discretion, direct the parties to file proposed findings of fact and conclusions of law and a proposed order accompanied by a supporting brief. In the event of non-compliance with such direction, the defaulting party may be deemed to have waived his or her right to object to the findings and conclusions of the judge.

§ 134.31 Contents of decisions

(a) *Contents.* The decision of the judge will be based upon the whole record, will be predicated upon a preponderance of the evidence, and will include findings of fact and conclusions of law, with reasons therefor, upon each material issue of fact and law of decisional significance.

(b) *Service of Decisions and Orders.* A copy of each written decision and order issued by the judge shall be served by the Office on each party to the proceeding.

§ 134.32 Finality of decisions.

(a) *Final decisions.* A decision by the judge shall be the final decision, upon issuance, in the following proceedings:

(1) Proceedings relative to formal employee grievances, pursuant to Agency SOP 37-71, which shall be final 15 days after issuance, provided that the deciding official designated in such SOP has not petitioned the Deputy Administrator (or the Inspector General, in the case of OIG grievances) for review, upon concurrence of the General Counsel (or the Counsel to the Inspector General in the case of OIG grievances), within such 15 day period, based on an allegation that the decision issued by the judge is contrary to law, regulation or Agency policy or is impracticable to implement, in which case the final decision shall be rendered by the Deputy Administrator (or Inspector General, as appropriate);

(2) Arbitrations arising under any pertinent labor agreement;

(3) Proceedings relative to the collection of debts owed to the Agency and to the United States, pursuant to the

Debt Collection Act of 1982 and Part 140 of this chapter.

(b) *Initial Decisions.* Except as otherwise provided by statute, unless a petition for review has been filed pursuant to § 134.34(a) of this part or the Agency reviewing official has ordered review pursuant to § 134.34(b), an initial decision of the judge shall be deemed adopted by the reviewing official and shall be the final decision of the Agency 30 days after issuance, in the following proceedings:

(1) Proceedings relative to revocation or suspension of Small Business Investment Company licenses; cease and desist orders; and removal or suspension of directors and officers of licensees of Small Business Investment Companies, pursuant to the SBIA and part 107 of this chapter;

(2) Proceedings to terminate participants in the Act's Section 8(a) Minority Small Business and Capital Ownership Development Assistance Program, pursuant to 15 U.S.C. 637(a) and part 124 of this chapter;

(3) Proceedings relative to violations of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) *et seq.*, and Parts 112 or 113 of this chapter, and violations of the Equal Credit Opportunity Act of 1974, 15 U.S.C. 1601 *et seq.*; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; Title VIII of the Civil Rights Act of 1968; Title IX of the Education Amendment of 1972, as amended, 20 U.S.C. 1681 *et seq.*; and section 4(b) of the Act, 15 U.S.C. 633(b), pursuant to Part 113 of this chapter, alleged by a person who claims to have been excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any financial assistance activities of the Agency;

(4) Proceedings relative to the privilege of any applicant or agent to appear before the Agency, pursuant to 15 U.S.C. 634 and 642 *et seq.*, and Part 103 of this chapter;

(5) Proceedings relative to the eligibility of, or preferred or certified status of, any bank or non-bank lender to continue to participate in Agency loan programs, pursuant to 15 U.S.C 634(b)(6) *et seq.*, and Parts 120 and 122 of this chapter;

(6) Proceedings relative to the termination of surety bond program participants, pursuant to 15 U.S.C. 694(a) *et seq.*, and Part 115 of this chapter;

(7) Proceedings relative to the rights, privileges or obligations of development companies, pursuant to sections 501, 502, and 503 of the SBIA, 15 U.S.C. 687 *et seq.*, and Part 108 of this chapter;

(8) Proceedings to determine allowance of costs and fees, pursuant to the Equal Access to Justice Act, 5 U.S.C. 504 and Part 132 of this chapter; and

(9) Proceedings relative to debarment from appearance before the Agency because of post-employment restrictions, pursuant to 18 U.S.C. 207(a) *et seq.*, and Part 105 of this chapter.

(c) *Recommended Decisions.* A recommended decision will be issued by the judge in contractor debarment and suspension proceedings, pursuant to Office of Federal Procurement Policy Letter 82-1 and § 125.11 of this chapter. A final decision by the Agency reviewing official shall be issued and become final in accordance with § 134.35 of this part.

§ 134.33 Requests to reopen record.

(a) *Clerical Errors.* Clerical errors resulting from oversight or omission may be corrected by the judge at any time after the record has been closed, on his or her own initiative after notice to all parties or on motion of any party.

(b) *New Evidence.* If new and material evidence of decisional significance becomes available, which was not available to the moving party before issuance of the decision by the judge, despite due diligence, such party may move to reopen the record within 30 days of issuance of the decision. Such motion shall be directed to the judge by whom the proceeding was conducted.

§ 134.34 Petition for review of initial decision.

(a) *By Petition.* Any party may serve and file a petition for review with the Agency reviewing official identified in the applicable substantive regulations governing the proceeding, within 3 days of issuance of the initial decision. A petition for review shall set forth exceptions to the initial decision, supported by specific references to relevant law, regulations, Agency policy, and the record, and may be supported by a brief.

(b) *By Order.* The Agency reviewing official may issue an order on his or her own motion, within 30 days of issuance of the initial decision, directing that the case be placed on the docket for review and shall serve a copy of such order on all parties to the proceeding.

(c) *Answer.* Within ten days after the filing of the petition or order for review, any party may file an answer.

(d) *Grounds for Review.* The Agency reviewing official may grant a petition for review when it is established that:

(1) The decision of the judge is based on an erroneous finding of fact or an erroneous interpretation or application of law, regulation or Agency policy; and

(2) Review is necessary and appropriate to ensure a just and proper disposition of the proceeding and to protect the interests of the parties.

(e) *Order and Effective Date.* After consideration of the record, the Agency reviewing official may:

(1) Affirm, reverse, or modify the initial decision, which action by the reviewing official shall be the final decision of the Agency, upon issuance;

(2) Remand the initial decision to the judge, with directions, for appropriate further proceedings; or

(3) Deny a petition for review summarily, in which case the decision of the judge shall forthwith become adopted by the reviewing official and shall become the final decision of the Agency.

§ 134.35 Recommended decision.

(a) *Exceptions.* Any party may serve and file exceptions to the recommended decision with the Agency reviewing official identified in the applicable substantive regulations governing the proceeding, within 30 days of the issuance of the recommended decision.

(b) *Contents.* Such exceptions shall be supported by specific references to relevent law, regulations, Agency policy, and the record, and may be supported by a brief.

(c) *Answers.* Within ten days after filing of the exceptions, any party may file an answer.

(d) *Order and Effective Date.* After consideration of the record, the Agency reviewing official may:

(1) Adopt, reject, or modify the recommended decision, which action by the reviewing official shall be the final decision of the Agency, upon issuance; or

(2) Remand the recommended decision to the judge, with directions, for appropriate further proceedings.

§ 134.36 Termination of jurisdiction.

The jurisdiction of the judge shall terminate upon issuance of the final, initial, or recommended decision, except as provided in § 134.33 of this part or unless the case is remanded for appropriate further proceedings.

§ 134.37 Settlements.

(a) *Contents of Settlement Agreement.* At any time after the commencement of the proceeding, the parties may submit to the judge a settlement agreement that includes:

(1) The basis for the agreement;

(2) A statement of jurisdiction;

(3) A provision that the settlement order will have the same force and effect as a decision issued in accordance with this part, except that it shall be final and may not be altered, modified, or set aside;

(4) A waiver of further Agency proceedings and the right to seek judicial review or otherwise challenge the validity of the order;

(5) A statement that the allegations in the petition, order to show cause or notice commencing the proceedings are fully resolved by the agreement and order;

(6) Signatures of the parties to the agreement; and

(7) A proposed order.

(b) *Action on Settlement Agreement.* After considering the agreement and proposed order, the judge will, within 30 days:

(1) Approve the settlement agreement and issue an order incorporating such agreement by reference; or

(2) Reject the settlement agreement and issue an order notifying the parties of the resumption of the proceeding.

(c) *Continuance Pending Settlement.* Any party may move to recess the proceeding for a reasonable time to permit negotiation of a settlement. The allowance of such continuance, and the duration thereof, is in the discretion of the judge. On or before the expiration of the time allowed for negotiations, the parties shall:

(1) Submit the proposed settlement agreement to the judge for consideration; or

(2) Inform the judge that an agreement cannot be reached so that the proceeding can be resumed.

(d) *Admissibility.* A rejected settlement agreement and all negotiations relative thereto shall not be admissible in evidence.

§ 134.38 Ex Parte communications.

Except to the extent required for the disposition of *ex parte* matters as authorized by law or this chapter, no person, party or employee of the Agency who performs any investigative or prosecutorial function in connection with a proceeding under this part shall consult or communicate with a judge concerning any fact or question of law or Agency precedent at issue in such proceeding, except on notice and opportunity for all parties to participate. In the event that such an unauthorized consultation or communication is initiated, the judge shall disclose that occurrence on the record with notice to the parties, either by filing therein a memorandum or by making a statement, if the transaction was oral, or by filing any writing delivered to him or her. When such a prohibited communication has been initiated by a party, the judge may give appropriate consideration to the imposition of such sanctions or remedial relief as the circumstances warrant.

PART 135—INTERGOVERNMENTAL REVIEW OF SMALL BUSINESS ADMINISTRATION PROGRAMS AND ACTIVITIES

Sec.

135.1 What is the purpose of these regulations?
135.2 What definitions apply to these regulations?
135.3 What programs and activities of the Agency are subject to these regulations?
135.4 What are the Administrator's general responsibilities under the Order?
135.5 What is the Administrator's obligation with respect to Federal interagency coordination?
135.6 What procedures apply to the selection of programs and activities under these regulations?
135.7 How does the Administrator communicate with State and local officials concerning the Agency's programs and activities?
135.8 How does the Administrator provide States an opportunity to comment on proposed Federal financial assistance and direct Federal development?
135.9 How does the Administrator receive and respond to comments?
135.10 How does the Administrator make efforts to accommodate intergovernmental concerns?
135.11 What are the Administrator's obligations in interstate situations?
135.12 [Reserved].
135.13 May the Administrator waive any provision of these regulations?

AUTHORITY: Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); Sec. 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506).

SOURCE: 48 FR 29387, June 24, 1983, unless otherwise noted.

EDITORIAL NOTE: For additional information, see related documents published at 47 FR 57369, December 23, 1982, 48 FR 17101, April 21, 1983, and 48 FR 29096, June 24, 1983.

§ 135.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on State processes and on State, areawide, regional and local coordination for review of proposed Federal financial assistance and direct Federal development.

(c) These regulations are intended to aid the internal management of the Agency, and are not intended to create any right or benefit enforceable at law by a party against the Agency or its officers.

§ 135.2 What definitions apply to these regulations?

"*Agency or SBA*" means the U.S. Small Business Administration.

"*Order*" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983, and titled "Intergovernmental Review of Federal Programs."

"*Administrator*" means the Administrator of the U.S. Small Business Administration or an official or employee of the Agency acting for the Administrator under a delegation of authority.

"*State*" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 135.3 What programs and activities of the Agency are subject to these regulations?

The Administrator publishes in the FEDERAL REGISTER a list of the Agency's programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

§ 135.4 What are the Administrator's general responsibilities under the Order?

(a) The Administrator provides opportunities for consultation by elected officials of those State and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance from, or direct Federal development by, the SBA.

(b) If a State adopts a process under the Order to review and coordinate proposed Federal financial assistance and direct Federal development, the Administrator, to the extent permitted by law:

(1) Uses the State process to determine official views of State and local elected officials;

(2) Communicates with State and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions;

(3) Makes efforts to accommodate State and local elected official's concerns with proposed Federal financial assistance and direct Federal development that are communicated through the State process;

(4) Allows the States to simplify and consolidate existing federally required State plan submissions;

(5) Where State planning and budgeting systems are sufficient and where permitted by law, encourages the substitution of State plans for federally required State plans;

(6) Seeks the coordination of views of affected State and local elected officials in one State with those of another State when proposed Federal financial assistance or direct Federal development has an impact on interstate metropolitan urban centers or other interstate areas; and

(7) Support State and local governments by discouraging the reauthorization or creation of any planning organization which is federally-funded, which has a limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.

§ 135.5 What is the Administrator's obligation with respect to Federal interagency coordination?

The Administrator, to the extent practicable, consults with and seeks advice from all other substantially affected Federal departments and agencies in an effort to assure full coordination between such agencies and the SBA regarding programs and activities covered under these regulations.

§ 135.6 What procedures apply to the selection of programs and activities under these regulations?

(a) A State may select any program or activity published in the FEDERAL REGISTER in accordance with § 135.3 of this part for intergovernmental review under these regulations. Each State, before selecting programs and activities, shall consult with local elected officials.

(b) Each State that adopts a process shall notify the Administrator of the Agency's programs and activities selected for that process.

(c) A State may notify the Administrator of changes in its selections at any time. For each change, the State shall submit to the Administrator an assurance that the State has consulted with elected local officials regarding the change. The Agency may establish deadlines by which States are required to inform the Administrator of changes in their program selections.

(d) The Administrator uses a State's process as soon as feasible, depending on individual programs and activities, after the Administrator is notified of its selections.

§ 135.7 How does the Administrator communicate with State and local officials concerning the Agency's programs and activities?

(a) [Reserved]

(b) The Administrator provides notice to directly affected State, areawide, regional, and local entities in a state of proposed Federal financial assistance or direct Federal development if:

(1) The State has not adopted a process under the Order; or

(2) The assistance or development involves a program or activity not selected for the State process.

This notice may be made by publication in the FEDERAL REGISTER or other appropriate means, which the Agency in its discretion deems appropriate.

§ 135.8 How does the Administrator provide states an opportunity to comment on proposed Federal financial assistance and direct Federal development?

(a) Except in unusual circumstances, the Administrator gives State processes or directly affected State, areawide, regional and local officials and entities:

(1) [Reserved]

(2) At least 60 days from the date established by the Administrator to comment on proposed direct Federal development or Federal financial assistance.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Agency have been delegated.

§ 135.9 How does the Administrator receive and respond to comments?

(a) The Administrator follows the procedures in § 135.10 if:

(1) A State office or official is designated to act as a single point of contact between a State process and all Federal agencies, and

(2) That office or official transmits a State process recommendation for a program selected under § 135.6.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no State process recommendation.

(2) If a State process recommendation is transmitted by a single point of contact, all comments from State, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a State has not established a process, or is unable to submit a State process recommendation, State, areawide, regional and local officials and entities may submit comments to the Agency.

(d) If a program or activity is not selected for a State process, State, areawide, regional and local officials and entities may submit comments to the Agency. In addition, if a state process recommendation for a nonselected program or activity is transmitted to the Agency by the single point of contact, the Administrator follows the procedures of § 135.10 of this part.

(e) The Administrator considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Administrator is not required to apply the procedures of

§ 135.10 of this part, when such comments are provided by a single point of contact directly to the Agency by a commenting party.

§ 135.10 How does the Administrator make efforts to accommodate intergovernmental concerns?

(a) If a State process provides a State process recommendation to SBA through its single point of contact, the Administrator either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the State process; or

(3) Provides the single point of contact with a written explanation of the decision in such form as the Administrator in his or her discretion deems appropriate. The Administrator may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Administrator informs the single point of contact that:

(1) The Agency will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Administrator has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 135.11 What are the Administrator's obligations in interstate situations?

(a) The Administrator is responsible for:

(1) Identifying proposed Federal financial assistance and direct Federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in States which have adopted a process and which select SBA's program or activity;

(3) Making efforts to identify and notify the affected State, areawide, regional, and local officials and entities in those States that have not adopted a process under the Order or do not select the Agency's program or activity;

(4) Responding pursuant to § 135.10 of this part if the Administrator receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Agency have been delegated.

(b) The Administrator uses the procedures in § 135.10 if a State process provides a State process recommendation to the Agency through a single point of contact.

§ 135.12 [Reserved]

§ 135.13 May the Administrator waive any provision of these regulations?

In an emergency, the Administrator may waive any provision of these regulations.

PART 136—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE SMALL BUSINESS ADMINISTRATION

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AUTHORITY: 29 U.S.C. 794.

SOURCE: 53 FR 19760, May 31, 1988, unless otherwise noted.

§ 136.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 136.102 Application.

This part applies to all programs or activities conducted by the Small Business Administration except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 136.103 Definitions.

For purposes of this part, the term—

"*Agency*" means the Small Business Administration.

"*Assistant Attorney General.*" "Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"*Auxiliary aids*" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"*Complete complaint*" means a written statement that contains the complainant's name and address and describes the Agency's alleged discriminatory actions in sufficient detail to inform the Agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"*Facility*" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"*Individual with handicaps*" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the Agency as having such an impairment.

"*Qualified individual with handicaps*" means—

(1) With respect to any Agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets he essential eligibility requirements and who can achieve the purpose of he program or activity without modifications in the program or activity that the Agency can demonstrate would result in a fundamental alteration in its nature;

(2) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation n, or receipt of benefits from, that program or activity; and

(3) For purposes of employment, a person who qualifies under the definition contained at 29 CFR 1613.702(f), which is made applicable to this Part by § 136.140.

"*Respondent*" means the organizational unit in which a complainant alleges that discrimination occurred.

"*Section 504*" means section 504 of he Rehabilitation Act of 1973 ((Pub. . 93-112, 87 Stat. 394) (29 U.S.C. 94)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 3-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, nd Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 2 Stat. 2955) and the Rehabilitation ct Amendments of 1986 (Pub. L. 99-06, 100 Stat. 1810). As used in this Part, section 504 applies only to programs or activities conducted by SBA nd not to activities of recipients of assistance from SBA.

136.104—136.109 [Reserved]

136.110 Self-evaluation.

(a) The Agency shall, by July 17, 89, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the Agency shall proceed to make the necessary modifications.

(b) The Agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The Agency shall, for at least three years following the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 136.111 Notice.

The Agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the Agency, and make such information available to them in such manner as the Administrator finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this part.

§§ 136.112—136.129 [Reserved]

§ 136.130 General prohibition against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Agency.

(b) The Agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(1) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(2) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(3) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(4) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(5) Deny a qualified individual with handicaps the opportunity to participate as a member of planning, voluntary (such as SCORE or Ace) or advisory boards; or

(6) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(c) The Agency shall permit a qualified individual with handicaps the opportunity to participate in any of the Agency's programs or activities, despite the existence of permissibly separate or different programs or activities especially designed to accommodate qualified individuals with handicaps.

(d) The Agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose of effect of which would—

(1) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(2) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(e) The Agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would:

(1) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Agency; or

(2) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(f) The Agency, in the selection of procurement contactors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(g) The Agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the Agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the Agency are not, themselves, covered by this part.

(h) The exclusion of individuals without handicaps from the benefits of a program limited by Federal statute or Executive Order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive Order to a different class of individuals with handicaps is not prohibited by this part.

(i) The Agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 136.131—136.139 [Reserved]

§ 136.140 Employment.

(a) No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program, or activity conducted by the Agency.

(b) The definitions, requirements and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) as established by the EEOC in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 136.141—136.148 [Reserved]

§ 136.149 Program accessibility; Discrimination prohibited.

Except as otherwise provided in § 136.150, no qualified individual with handicaps shall, because the Agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Agency.

§ 136.150 Program accessibility: Existing facilities.

(a) *General.* The Agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the Agency to make each of its existing facilities accessible to and usable by individuals with handicaps; or

(2) Require the Agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Agency has the burden of proving that compliance with § 136.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Administrator or Deputy Administrator after considering all Agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. The Administrator or Deputy Administrator's decision shall be made within 30 days of the initial decision by Agency personnel that an action would result in such an alteration or burdens. If an action would result in such an alteration or such burdens, the Agency shall take any other action that would not result in such an alteration or such burdens but would, nevertheless, ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* The Agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aids to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The Agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The Agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the Agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The Agency shall comply with the obligations established under this section by September 13, 1988, except that where structural changes in facilities are undertaken, such changes shall be made by July 15, 1991, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Agency shall develop, by January 16, 1989, a transition plan setting forth the steps necessary to complete such changes. The Agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the Agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 136.151 Program accessibility; New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf if, or for the use of the Agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600—101-19.607, apply to buildings covered by this section.

§§ 136.152—136.159 [Reserved]

§ 136.160 Communications.

(a) The Agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The Agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Agency.

(i) In determining what type of auxiliary aid is necessary, the Agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The Agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the Agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The Agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Agency shall provide a sign at each primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the Agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Agency has the burden of proving that compliance with § 136.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Administrator or Deputy Administrator after considering all Agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. The Administrator or Deputy Administrator's decision shall be made within 30 days of the initial decision by Agency personnel that an action would result in such an alteration or burdens. If an action required to comply with this section would result in such as alteration or such burdens, the Agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 135.161—136.169 [Reserved]

§ 136.170 Compliance procedures.

(a) *Applicability.* Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the Agency.

(b) *Employment complaints.* The Agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by EEOC in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) *Filing a complaint*—(1) *Who may file.* Any person who believes that he or she has been subjected to discrimination prohibited by this part may file a complaint. An authorized representative of such person may file a complaint on his or her behalf. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class, or the authorized representative of a member of that class, may file a complaint.

(2) *Confidentiality.* The Chief Office of Civil Rights Compliance (OCRC), shall hold in confidence the identity of any person submitting a complaint, unless the person submits written authorization otherwise, except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or proceeding under this part, or to cooperate with the Office of Inspector General in the performance of its responsibilities under the Inspector General Act of 1978, as amended.

(3) *When to file.* Complaints shall be filed within 180 days of the alleged act of discrimination, except when this deadline is extended by the Chief, OCRC, for good cause shown. For purposes of determining when a complaint is timely filed under this paragraph, a complaint mailed to the Agency shall be deemed filed on the date it is postmarked. Any other complaint shall be deemed filed on the date it is received by the Agency.

(4) *How to file.* Complaints may be delivered or mailed to the Chief, OCRC, Small Business Administration, 1441 L Street NW.—Room 501, Washington, DC 20416. Any other SBA official receiving a complaint under this part shall forward such complaint immediately to the Chief, OCRC.

(d) *Notification to the Architectural and Transportation Barriers Compliance Board.* The agency shall promptly send to the Architectural and Transportation Barriers Compliance Board a copy of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended, 42 U.S.C. 4151-4157 is not readily accessible to and usable by individuals with handicaps.

(e) *Acceptance of complaint.* (1) The Chief, OCRC, shall accept a complete complaint that is filed in accordance with paragraph (c) of this section and over which the Agency has jurisdiction. The Chief, OCRC, shall notify the complainant and the respondent of receipt and acceptance of the complaint.

(2) If the Chief, OCRC, receives a complaint that is not complete, he or she shall notify the complainant, within 30 days of receipt of the incomplete complaint, that additional information is needed. If the complainant fails to furnish the necessary information within 30 days of receipt of this notice, the Chief, OCRC, shall dismiss the complaint without prejudice.

(3) If the Chief, OCRC, receives a complaint over which the Agency does not have jurisdiction, he or she shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) *Investigation/Conciliation.* (1) Within 180 days of the receipt of a complete complaint the Chief, OCRC, shall complete the investigation of the complaint and attempt informal resolution. If no informal resolution is achieved, the Chief, OCRC, shall issue a letter of findings.

(2) The Chief, OCRC, may require Agency employees to cooperate in the investigation and attempted resolution of complaints. Employees who are re-

quired to participate in any investigation under this section shall do so as part of their official duties and during regular duty hours.

(3) The Chief, OCRC, shall furnish the complainant and the respondent with a copy of the investigative report and provide the complainant and respondent with an opportunity for informal resolution of the complaint.

(4) If a complaint is resolved informally, the terms of the agreement shall be reduced to writing and made part of the complaint file, with a copy of the agreement provided to the complainant and respondent. The written agreement may include a finding on the issue of discrimination and shall describe any corrective action to which the complainant and respondent have agreed.

(g) *Letter of findings.* If an informal resolution of the complaint is not reached, the Chief, OCRC, shall, within 180 days of receipt of the complete complaint, notify the complainant, the respondent and the Director, Office of Equal Employment Opportunity and Compliance (OEEOC), of the results of the investigation in a letter sent by certified mail, return receipt requested, and containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found;

(3) A notice of the right of the complainant and respondent to appeal to the Director, OEEOC; and

(4) A notice of the right of the complainant and respondent to request a hearing.

The letter of findings becomes the final Agency decision if neither party files an appeal within the time prescribed in paragraph (h)(1) of this section. The Chief, OCRC, shall certify that the letter of findings is the final Agency decision on the complaint at the expiration of that time.

(h) *Filing an appeal.* (1) Any notice of appeal to the Director, OEEOC, with or without a request for hearing, shall be filed by the complainant or the respondent in writing with the Chief, OCRC, within 30 days of receipt from him or her of the letter required by paragraph (g) of this section. The notice shall be accompanied by a certificate of service attesting that the party has served a copy of his or her notice of appeal on all other parties to the proceeding. The Director, OEEOC, may extend this time limit for good cause shown pursuant to the procedure in paragraph (h)(3) of this section.

(2) If a timely notice of appeal without a request for hearing is filed, any other party may file a written request for hearing within the time limit specified in paragraph (h)(1) of this section or within 10 days of his or her receipt of such notice of appeal, whichever is later.

(3) A party may appeal to the Director, OEEOC, from a decision of the Chief, OCRC, that an appeal is untimely. This appeal shall be filed with the Director, OEEOC, within 15 days of receipt of the decision from the Chief, OCRC.

(4) Any request for hearing will be construed as a request for an oral hearing. The complainant's failure to file a timely request for a hearing in accordance with this part shall constitute waiver of the right to a hearing, but shall not preclude his or her submitting written information and argument to the Director, OEEOC, in connection with his or her notice of appeal.

(i) *Acceptance of appeal.* The Chief, OCRC, shall accept and process any timely filed appeal.

(1) If a notice of appeal is filed but no party requests a hearing, the Chief, OCRC, shall promptly transmit the complaint file, the letter of findings and the notice of appeal to the Director, OEEOC.

(2) If a notice of appeal if filed and a party makes a timely request for a hearing, the Chief, OCRC, will transmit the notice of appeal, the request for hearing and the investigative file to the Office of Hearings and Appeals which office will assign the case to an administrative judge who will conduct a hearing in accordance with the procedures contained in 13 CFR Part 134.

(j) *Decision.* (1) Where no request for a hearing is made, the Director, OEEOC, shall make the final Agency decision based on the contents of the complaint file, the letter of findings, the notice of appeal, and any re-

ponses to the notice of appeal filed by
ther parties. The decision shall be
nade within 60 days of receipt of the
ppeal or any response to the notice of
ppeal, whichever is applicable. If the
irector, OEEOC, determines that he
r she needs additional information
rom any party, he or she shall re-
uest the information and provide the
ther party or parties an opportunity
respond to that information. The
irector, OEEOC, shall have 60 days
rom receipt of the additional infor-
ation or responses to such additional
formation, whichever is later, to
ake the decision. The Director,
EEOC, shall transmit his or her deci-
on in writing to the parties. The deci-
on shall set forth the findings, reme-
al actions, and reasons for the deci-
on.

(2) Where a request for a hearing
as been made, the administrative
dge shall issue an initial decision, in
riting, based on the hearing record,
mposed of the proposed findings of
ct, conclusions of law, and remedies,
the parties and to the Director,
EEOC, within 30 days after receipt
the hearing transcripts, or within
days after the conclusion of the
aring if no transcript is made. This
me limit may be extended with the
rmission of the Director, OEEOC.
ne decision of the administrative
dge shall be deemed to be the final
cision of the Agency after 30 days,
less a party files a petition for
view with the Director, OEEOC,
rsuant to 13 CFR 134.34(a) or the
rector, OEEOC, issues an order stat-
g his or her decision to review the
itial decision, pursuant to 13 CFR
4.34(b). *See* 13 CFR 134.32(b)(3).

3) Where a petition for review is
ed or a review is ordered by the Di-
tor, OEEOC, the Director, OEEOC,
all make the final decision of the
ency based on information in the
nplaint file, the letter of findings,
hearing record, the initial decision,
petition for review, and any re-
nses to the petition or order. The
ision shall be made within 60 days
receipt of the petition for review,
order, or any responses to such pe-
on or order, whichever is later. If
Director, OEEOC, determines that
or she needs additional information
from any party, he or she shall request the information and provide the other party or parties an opportunity to respond to that information. The Director, OEEOC, shall have 60 days from receipt of the additional information or responses to such additional information, whichever is later, to make the decision. The Director, OEEOC, shall transmit his or her decision by letter to the parties. The decision shall set forth the findings, recommended remedial actions, and reasons for the decision. The decision shall adopt, reject, or modify the initial decision of the administrative judge. If the decision is to reject or modify the initial decision, the decision letter shall set forth in detail the specific reasons for the rejection or modification.

(4) Any respondent required to take action under the terms of the decision of the Agency shall do so promptly. The Chief, OCRC, may require periodic compliance reports specifying:

(i) The manner in which compliance with the provisions of the decision has been achieved;

(ii) The reasons any action required by the final decision has not been taken; and

(iii) The steps being taken to ensure full compliance.

(k) The time limit cited in paragraph (f) of this section may be extended with the permission of the Assistant Attorney General.

(l) The Agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

PART 137—NATIONAL SECURITY INFORMATION PROGRAM

Sec.
137.1 Purpose and scope.
137.2 Policy.
137.3 Administration of program.

AUTHORITY: Sec. 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6).

SOURCE: 49 FR 4370, Feb. 6, 1984, unless otherwise noted.

§ 137.1 Purpose and scope.

(a) This rule is promulgated by the Small Business Administration pursuant to the requirement of section 5.3(b) of Executive Order 12356, "National Security Information," 47 FR 14874 (1982), that unclassified regulations of each agency which establish information security policy, to the extent that the regulations affect members of the public, be published in the FEDERAL REGISTER, and in accordance with the requirement contained in paragraph 1d of National Security Decision Directive 84 (NSDD 84), "Safeguarding National Security Information," signed by the President on March 11, 1983, that agencies establish policies governing contacts between media representatives and agency personnel.

(b) This rule covers all information and material handled by the Small Business Administration that is owned by, produced for or by, or under the control of, the United States Government, which has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and is so designated. This type of information is defined in section 1.1 of Executive Order 12356 as national security information (hereinafter classified information).[1]

§ 137.2 Policy.

It is the Small Business Administration's policy to act in accordance with Executive Order 12356 with respect to all classified information.

§ 137.3 Administration of program.

(a) *General.* The Security Officer,
Office of Inspector General will: (1)
Implement and oversee the Small
Business Administration's national security information program; (2) receive questions, suggestions, and complaints regarding the program; (3)
make changes to the program as he/
she deems advisable; (4) assure that
the program is at all times consistent
with Executive Order 12356; (5) receive requests for declassification re-
gardless of the origin of the request
assuring that requests are acted upor
within 60 days and that requests sub
mitted under the Freedom of Informa
tion Act are handled in accordanc
with that Act; and (6) be responsibl
for coordinating all responses to medi
inquiries with respect to classified in
formation in the possession of any o
ficial or employee of the Agency.

(b) *Media Contacts.* All contacts b
members of the media which concer
classified information shall be directe
to the attention of the Security Off
cer, Office of Inspector General, Sma
Business Administration, 1441 L S
N.W., Washington, D.C. 20416. Ar
contacts by members of the med
with other Agency officials and er
ployees with respect to classified info
mation, shall be referred to the Sec
rity Officer for coordination of t
Agency response.

(c) *Systematic Review for Declassi*
cation. Classified information in t
possession and control of the Sm
Business Administration or of the
chivist of the United States, det
mined pursuant to 44 U.S.C. 2103
constitute permanently valua
records of the Government, will
systematically reviewed for declass
cation. This review will be in acco
ance with systematic review guideli
authorized by the Administator of
Small Business Administration.

(d) *Mandatory Review Procedur*
(1) *Requests.* The Security Officer
process requests for mandatory rev
for declassification. Mandatory rev
for declassification will occur wh
ever: (i) The request is made b
United States citizen or perma
resident alien, a Federal agency,
State or local government; and (ii)

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[1] National security information is information classified at one of the following three levels:

(1) "Top Secret," which applies to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security.

(2) "Secret," which applies to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security; or

(3) "Confidential," which applies to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security.

request describes the document or material containing the information with sufficient specificity to enable the agency to locate it with a reasonable amount of effort. Requests for mandatory review should be submitted in writing to the Security Officer, Office of Inspector General, 1441 L Street, N.W., Washington, D.C. 20416.

(2) *Exemptions from Mandatory Review.* Information originated by a President, the White House Staff, by committees, commissions, or boards appointed by the President, or others specifically providing advice and counsel to a President or acting on behalf of a President is exempted from mandatory review for declassification.

(3) *Processing Requirements.* Inasmuch as the Small Business Administration does not have original classification authority, any classified information or materials in its possession will have been classified by another agency. Requests for mandatory review will, therefore, be forwarded for review to the agency which originally classified the information or material (hereinafter referred to as the originating agency). The forwarded requests shall be accompanied by a copy of the records requested together with the Small Business Administration's recommendations for action. Upon receipt, the originating agency shall:

(i) Make a prompt declassification determination (depending on the amount of search and review time required to process the request) and notify the requester accordingly, or inform the requester of the additional time needed to process the request;

(ii) Make reasonable efforts to release segregable portions, consistent with other applicable law, in a coherent segment when information cannot be declassified in its entirety; and

(iii)(A) Notify the requester of the right of an administrative appeal, which must be filed within 60 days of receipt of the denial. The originating agency shall make a final determination within one year from the date or receipt except in unusual circumstances. After consultation with the originating agency, the Security Officer may inform the requester of the referral. In cases in which the originating agency determines that the existence or non-existence of the requested information is itself classifiable, the Security Officer will respond to the requester as directed by the originating agency.

(B) If the request is denied in whole or in part, the requester will be notified of the right to appeal the determination within 60 days of receipt of the denial and of the procedures for appeal. All such appeals will be processed pursuant to the appeal procedures of the originating agency. If the information or material is declassifed, the Security Officer will refer the request to the appropriate Agency office for processing under the Freedom of Information Act, consistent with SBA regulations at 13 CFR Part 102 of these regulations, and will so advise the requester.

(4) *Fees.* Fees shall be assessed in accordance with the fee schedules established by the Small Business Administration with regard to the Freedom of Information Act and the Privacy Act as contained in Part 102 of SBA regulations.

PART 140—DEBT COLLECTION

Sec.

140.1 Scope.
140.2 Definitions.
140.3 Information disclosure.
140.4 Salary offset.
140.5 Administrative offset.
140.6 Income tax refund offset.

AUTHORITY: 31 U.S.C. 3720A, Deficit Reduction Act; 15 U.S.C. 634(b)(6), Small Business Act.

SOURCE: 49 FR 27139, July 2, 1984, unless otherwise noted.

§ 140.1 Scope.

These regulations prescribe procedures which may be utilized by SBA in the collection of debts owed to SBA and to the United States. The failure of SBA to comply with any provision of these regulations shall not be available as a defense to the debtor to the collection of the claim through judicial process.

§ 140.2 Definitions.

(a) "Administrative offset" means the withholding of money payable by the United States to or held by the United States on behalf of a person to satisfy a debt owed to the United States by that person.

(b) "Consumer reporting agency" means—

(1) Any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports; or

(2) Any person who, for monetary fees, dues, or on a cooperative basis, regularly engages in whole or in part in the practice of: (i) Obtaining credit or other information on consumers for the purpose of furnishing such information to consumer reporting agencies (as defined in paragraph (b)(1) of this section), or (ii) Serving as a marketing agent under arrangements enabling third parties to obtain such information from such reporting agencies.

(c) "Debt" or "indebtedness," for purposes of § 140.4 of these regulations, means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interest, forfeitures, or any other source.

(d) "Disposable pay" means that part of pay of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

(e) "Person," for purposes of § 140.5 of these regulations, does not include any agency of the United States, or of any State or local government. The term does include individuals and any form of business entity.

(f) "Salary offset" means the deduction of money from the current pay account of a present or former SBA employee payable by the United States to or held by the United States on behalf of such person to satisfy a debt owed to the United States by that person.

(g) "Employee" for the purposes of § 140.2(f) and § 140.4 means a current civilian employee as defined in 5 U.S.C. 2105; an employee of the U.S. Postal Service or Postal Rate Commission; or a member of the Uniformed Services or Reserve of the Uniformed Services.

(h) "System of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(i) "Waiver," for purposes of § 140.4, means the cancellation, remission, or forgiveness of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 5 U.S.C. 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or any other similar law.

(j) When used in this part, "Agency" has the meaning given at 5 CFR 550.1103.

[49 FR 27139, July 2, 1984, as amended at 53 FR 1607, Jan. 21, 1988]

§ 140.3 Information disclosure.

(a) In attempting to collect a claim of SBA, the Administrator of SBA, or his designee, may disclose to a consumer reporting agency information from a system of records that an individual is responsible for a claim if the following requirements are met:

(1) The notice for the system of records required by section 552a(e)(4) of Title 5, United States Code, indicates that information in the system may be disclosed to a consumer reporting agency;

(2) SBA has reviewed the claim and determined that it is valid and overdue;

(3) SBA has sent a written notice to the individual informing him—

(i) That the payment of the claim is overdue;

(ii) That SBA intends to disclose to a consumer reporting agency, within not less than 60 days after sending such notice, that the individual is responsible for such claim;

(iii) Of the specific information intended to be disclosed to the consumer reporting agency; and

(iv) Of the rights of such individual to a full explanation of the claim, to dispute any information in SBA's records concerning the claim, and to administrative appeal or review with respect to the claim;

(4) Such individual has not:

(i) Repaid or agreed to repay such claim under a repayment plan which is agreeable to SBA and is in a written form signed by such individual; or

(ii) Filed for review of such claim under paragraph (d) of this section.

(b) *Inability to contact debtor.* (1) If SBA knows or discovers that it is unable to contact the individual, SBA must make reasonable efforts to locate the individual prior to disclosure to a consumer reporting agency.

(2) Reasonable efforts include, but are not limited to, obtaining an address from the Internal Revenue Service, seeking an address from a consumer reporting agency, or making a good faith mailing of the required notice to the debtor's last known address.

(c) *Content of Disclosed Information.* The information disclosed by SBA to the consumer reporting agency is limited to: (1) The name, address, taxpayer identification number, and other information necessary to establish the identity of the individual; (2) the amount, status, and history of the claim; and (3) the program under which the claim arose.

(d) *Review of the claim.* (1) Prior to a disclosure to any consumer reporting agency under paragraph (a) of this section and at other times as may be permitted by law, SBA shall, upon the request of any individual alleged by SBA to be responsible for the claim, provide for the review of the obligation of such individual by the SBA field office in which the claim is lodged.

(i) An individual shall have 60 days from the date of SBA's mailing of the notice required under § 140.3(a)(3) to request a review of his claim before SBA may disclose any information to consumer reporting agencies.

(ii) This review shall include an opportunity for reconsideration of the initial decision concerning the claim.

(2) SBA will issue a final decision at the earliest practicable date, but not later than 60 days after the lawful request for review by the debtor.

(e) *Subsequent Disclosure and Verification.* (1) SBA will promptly disclose any substantial change in the status or amount of the claim to each consumer reporting agency to which the original disclosure was made.

(2) SBA will promptly verify or correct information concerning the claim upon the request of any such consumer reporting agency for verification of any or all information so disclosed.

(3) SBA will obtain adequate assurances from each such consumer reporting agency concerning compliance by such consumer reporting agency with the Fair Credit Reporting Act (15 U.S.C. 1681, *et seq.*), and any other Federal law governing the provision of consumer credit information.

§ 140.4 Salary offset.

(a) When SBA determines that an SBA or other Federal employee is indebted to the SBA for debts to which the SBA is entitled to be repaid at the time of the determination, the amount of indebtedness may be collected in monthly installments or at officially established pay intervals, by deduction from the current pay account of the individual.

(1) These salary deductions may be made only after the usual governmental collection procedures are tried and found to be unproductive.

(2) The deductions may be made from basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an individual not entitled to basic pay, other authorized pay.

(3) The amount deducted for any period may not exceed 15 percent of disposable pay, except that a greater percentage may be deducted upon the signed written consent of the individual involved.

(4) *Post employment payments.* (i) If an employee terminates employment after salary offset has been initiated, a deduction may be made from final

salary payments, from payment for accrued annual leave, or from similar payments due the individual from the Federal government. Deductions against such final payments may exceed 15% of the total payment, up to the amount owed to the Federal government. If the employee terminates employment prior to the completion of salary offset procedures, deductions shall be made pursuant to 31 U.S.C. 3716.

(ii) Where SBA is collecting the indebtedness through deductions from biweekly or monthly retired pay, the Agency may not deduct more than 15 percent of disposable pay for any payment period, except that a greater percentage may be deducted upon the signed written consent of the individual involved.

(b) *Notice and Opportunity To Be Heard.* (1) Before initiating any proceedings under paragraph (a) of this section to collect any indebtedness of an employee, SBA shall provide the employee with—

(i) A minimum of 30 days written notice, informing such individual: Of the nature and amount of the indebtedness determined to be due; the intention of the agency to initiate proceedings to collect the debt through deductions from pay;

(ii) An opportunity to inspect and copy Government records relating to the debt;

(iii) An opportunity to enter into a written agreement acceptable to SBA to establish a schedule for the repayment of the debt; and

(iv) An opportunity for a hearing before SBA's Office of Hearings and Appeals concerning the determination of the existence or the amount of the debt, and in the case of an individual whose repayment schedule is established by a written agreement pursuant to paragraph (b)(1)(iii), concerning the terms of the repayment schedule.

(2) If there is a statutory provision authorizing waiver, remission or forgiveness of the debt, SBA will give the employee—

(i) Notice of the provision and an explanation of the conditions under which waiver will be granted; such notice shall accompany the notice described in paragraph (b)(1)(i) of this section;

(ii) Fifteen days from receipt of such notice in which to request consideration for waiver; and

(iii) A written response, if the employee timely requests a waiver. Such response shall answer the issues raised in the employee's request; state the agency's decision; and if the decision is not in the employee's favor, inform him or her whether there is a right to request a hearing before SBA's Office of Hearings and Appeals, that a hearing will be granted if the employee is entitled to one and timely files a request for a hearing, and that such hearing will be conducted prior to the initiation of deductions.

(3) Any alternative arrangement entered into pursuant to paragraph (b)(1)(iii) of this section shall be signed by both the employee and the SBA and be documented in the SBA's files.

(4) A hearing, described in paragraph (b)(1)(iv) of this section, shall be provided if the individual, on or before the 15th day following receipt of the notice described in paragraph (b)(1)(i) of this section, and in accordance with the procedures of SBA's Office of Hearings and Appeals, files a petition requesting such a hearing.

(i) The petition shall be in writing and certified and shall:

(A) State that the employee is seeking a hearing before SBA's Office of Hearings and Appeals pursuant to the Debt Collection Act of 1982 (Pub. L. 97-365) and these regulations;

(B) Identify and explain with reasonable specificity and brevity the facts, evidence and witnesses which the employee believes support his or her petition;

(C) State the relief requested; and

(D) Include the signature of the petitioner or authorized representative and his or her address.

(ii) The timely filing of a petition for a hearing will stay the commencement of collection proceedings.

(iii) The hearing will be conducted by SBA's Office of Hearings and Appeals, pursuant to Part 134 of these regulations.

(iv) SBA's Chief Administrative Law Judge will issue a written final decision at the earliest practicable date, but not later than 60 days after the timely filing of the petition requesting the hearing.

(v) Such final decision shall be based upon the whole record, be predicated upon a preponderance of the evidence, and include findings of fact and conclusions of law, with reasons therefor, upon each material issue of fact and law of decisional significance.

(vi) If the employee timely requests a waiver under § 140.4(b)(2), the time period in which to file a petition for a hearing is suspended. An employee must then file a petition for a hearing within 15 days after receiving a written response denying the request for a waiver.

(5) An employee loses his or her right to a hearing, and will have his or her disposable pay offset in accordance with the repayment schedule established if the employee fails to file a written petition for a hearing before the deadline established under § 140.4(b)(4).

(6) If the employee files his or her petition for a hearing within 5 days after the deadline date established under § 140.4(b)(4), and SBA's Chief Administrative Law Judge finds that the employee has shown good cause for the failure to comply with the established deadline date, such hearing official *may* find that the employee has not waived his or her right to a hearing.

(c) *Notice to paying agency.* Upon completion of the procedures explained in paragraphs (a) and (b) of this section, SBA will provide the following to the paying agency:

(1) The Chief of SBA's Office of Portfolio Management shall certify, for SBA, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that these regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management.

(2) If the collection must be made in installments, the SBA shall advise the paying agency of the amount or percentage of disposable pay to be collected in each installment. SBA may, at its option, state the number and the commencing date of the installments. If SBA does not state such a date, the paying agency shall begin collection the next officially established pay period.

(3) SBA will forward the employee's written consent to the salary offset or signed statement acknowledging receipt of the required procedures. If SBA has not obtained such consent or statement, SBA will advise the paying agency of the actions taken under 5 U.S.C. 5514(b) and give the dates the actions were taken.

(d) *Deductions from pay of an SBA employee upon certification of another agency.* SBA will make deductions from the pay of its employee upon receipt of a claim from another agency. The head of such agency, or a designee, shall provide the information required in paragraph (c) and certify that the claim satisfies the requirements of 5 U.S.C. 5514, the applicable regulations of the Office of Personnel Management, and the implementing regulations of the creditor agency.

(e) *Refunds.* Amounts paid or deducted pursuant to this section by an employee for a debt which is waived or otherwise found not owing to the United States shall be promptly refunded to the employee.

(f) Interest, penalties, and administrative costs. SBA is authorized to collect any assessment of interest, penalties, and administrative costs on debts being collected under this section. The assessment of these charges and the waiving of them must be made in accordance with 4 CFR 102.13.

(g) Non-waiver of rights by payments. An employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. 5514 shall not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless there are statutory or contractual provisions to the contrary.

[49 FR 27139, July 2, 1984, as amended at 49 FR 38931, Oct. 2, 1984; 53 FR 1607, Jan. 21, 1988]

§ 140.5 Administrative offset.

(a) SBA may, after attempting to collect a claim from a person under normal SBA collection procedures, collect the claim by means of administrative offset. However, no claim that has been outstanding for more than ten years may be collected by means of administrative offset.

(b) Prior to collecting any claim through administrative offset, SBA shall provide the debtor with—

(1) Written notification, of at least 30 days, concerning the nature and amount of the claim, the intention of SBA to collect the claim through administrative offset, and an explanation of the rights of the debtor under paragraph (b) of this section;

(2) An opportunity to inspect and copy SBA's records with respect to the claim;

(3) An opportunity to enter into a written agreement with SBA to establish a schedule for the repayment of the debt; and

(4) An opportunity for the review, by SBA's Office of Hearings and Appeals in accordance with the provisions of Part 134 of these regulations, of SBA's determination of the existence of the claim. The administrative judge will issue a written final decision at the earliest practicable date, but not later than 60 days after the timely filing of the petition requesting the review.

(c) The right to review is waived by a debtor, subject to paragraph (d) of this section, if the debtor fails to file a written petition on or before the 15th day following receipt of the notice described in paragraph (b) of this section.

(d) If the debtor files a petition for review within 5 days after the established deadline date, and the administrative judge finds that the debtor has shown good cause for the failure to comply with the deadline date, such reviewing official *may* find that the debtor has not waived the right to a review.

(e) Where another Federal agency certifies to SBA that such agency is owed a debt and that the debtor has been provided due process rights in accordance with the agency's own regulations, SBA may withhold money due the debtor from SBA to satisfy such debt. Prior to such offset, SBA will notify the debtor in writing of SBA's intention to withhold such money to satisfy a debt owed to the United States. Such notice will identify the nature of the debt owed and the agency to which it is owed, as well as the amount of the debt.

(f) The provisions of this section do not apply in any case in which a statute either explicitly provides for or prohibits the collection through administrative offset of the claim or type of claim involved.

[49 FR 27139, July 2, 1984, as amended at 49 FR 38931, Oct. 2, 1984]

§ 140.6 Income tax refund offset.

(a) *Definitions*—(1) *Past due*. Any accelerated debt or any judgment debt is past due for the purpose of this section, and remains past due until paid in full. An unaccelerated debt is past due if, at the time of the notice required by paragraph (c) of this section, any part of the debt had been due, but not paid for at least 90 days. Such an unaccelerated debt remains past due until paid current.

(2) *Legally enforceable*. A debt is legally enforceable if there is any forum, including State or Federal court or administrative agencies, in which SBA's claim would not be barred on the date of offset. Non-judgment debts are enforceable for ten years. Judgment debts are enforceable beyond ten years.

(3) *Debt*. A debt eligible for offset of tax overpayment is the principal amount loaned but not repaid or otherwise due, plus interest accrued to the date of referral, penalties, and costs, including any fee charged by the Internal Revenue Service. If a note has not been accelerated, the principal amount eligible for offset is limited to the principal portion of installments due, but not paid, as of the day of referral.

(4) *Notice*. Notice means the information sent to the debtor pursuant to paragraph (c) of this section. The information may be included on or with a bill or monthly statement. The date of notice is three days after mailing by SBA.

(5) *Dispute.* A dispute is a written statement that all or part of an alleged debt is not past due or is not legally enforceable supported by documentation or other evidence. Offers of compromise, repayment plans, requests for deferrals and other requests or offers are not disputes.

(b) *Referral.* SBA may request the IRS to offset any tax refund payable to an individual who has a past due, legally enforceable debt of $25.00 or more due to the Agency. SBA shall make the referral in the form and on the dates prescribed by the IRS.

(c) *Notice.* Before making a referral, SBA will mail a notice to the debtor's last known address stating that SBA intends to refer the debt to IRS for a tax refund deduction unless the debtor pays the past due amount or disputes the debt according to the procedures explained below within 60 days. The notice will include an address where disputes must be sent.

(d) *Other preconditions.* Prior to referring a debt, SBA will:

(1) Disclose the loan status to a consumer reporting agency as provided by 31 U.S.C. 3711(f) and implemented in 13 CFR 140.3; and

(2) Satisfy any other conditions prescribed by the Secretary of the Treasury in 26 CFR 301.6402-6T or other regulations.

(e) *Disputes.* A debtor may request a review by SBA if the debtor believes that all or part of the debt is not past due or legally enforceable as follows:

(1) The debtor must send a written request for review to the address provided in the notice.

(2) The request must state the amount disputed and the reasons why the debtor believes that the debt is not past due or is not legally enforceable.

(3) The request must include any documents which the debtor wishes to be considered or state that additional information will be submitted within the time permitted.

(4) The request, and any additional information submitted pursuant to paragraph (e)(3) of this section, must be received by SBA, at the address stated in the notice, within 60 days of the notice provided for in paragraph (c) of this section.

(f) *Reviews.* The SBA field office responsible for servicing a debt will review disputes. SBA shall consider any documentation and arguments submitted by the debtor and agency records. A decision that any disputed portion of the debt is eligible to be referred shall be reviewed and concurred in by a supervisory official. SBA shall send a written notice of the decision to the debtor.

(g) *Change in amount due.* SBA will notify IRS of any reduction in the amount due within 10 business days of receipt of payments or notice of other reductions. SBA will not report increases in the amount due after the original referral. However, any fee charged by IRS may be imposed and added to the balance at the time of offset.

(g) *Prior reviews.* Any debt which has been reviewed pursuant to this section, or any other section of this part, or which has been reduced to a judgment, may not be disputed except on the grounds of payments made, or events occurring, subsequent to the previous review.

(h) *Simultaneous referrals.* SBA may refer a debt to IRS for a tax refund offset and take additional action at the same time or in sequence. Such additional action may include, but is not limited to, disclosing the debt to a consumer reporting agency as permitted by 31 U.S.C. 3711(f) and 13 CFR 140.3. When SBA makes simultaneous or sequential referrals, only one review is required, provided that:

(1) SBA gives notice of each intended action at least 60 days before the first action;

(2) The review granted is the broadest permitted for any of the proposed actions; and

(3) All the referrals occur within 6 months of the notice.

[53 FR 4113, Feb. 12, 1988]

PART 143—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

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Subpart D—After-the-Grant Requirements

143.50 Closeout.
143.51 Later disallowances and adjustments.
143.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

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Subpart A—General

§ 143.1 Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

§ 143.2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§ 143.3 Definitions.

As used in this part:

"*Accrued expenditures*" mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

"*Accrued income*" means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

"*Acquisition cost*" of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

"*Administrative*" requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from "*programmatic*" requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

"*Awarding agency*" means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

"*Cash contributions*" means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

"*Contract*" means (except as used in the definitions for "*grant*" and "*subgrant*" in this section and except where qualified by "*Federal*") a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

"*Cost sharing or matching*" means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

"*Cost-type contract*" means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

"*Equipment*" means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

"*Expenditure report*" means: (1) For nonconstruction grants, the SF-269 "Financial Status Report" (or other equivalent report); (2) for construction grants, the SF-271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

"*Federally recognized Indian tribal government*" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

"*Government*" means a State or local government or a federally recognized Indian tribal government.

"*Grant*" means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

"*Grantee*" means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

"*Local government*" means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

"*Obligations*" means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

"*OMB*" means the United States Office of Management and Budget.

"*Outlays*" (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of inkind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

"*Percentage of completion method*" refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

"*Prior approval*" means documentation evidencing consent prior to incurring specific cost.

"*Real property*" means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

"*Share*", when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

"*State*" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

"*Subgrant*" means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of "*grant*" in this part.

"*Subgrantee*" means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

"*Supplies*" means all tangible personal property other than "*equipment*" as defined in this part.

"*Suspension*" means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

"*Termination*" means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. "*Termination*" does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period; (2) Withdrawal of the unobligated balance as of the expiration of a grant; (3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

"*Terms of a grant or subgrant*" mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

"*Third party in-kind contributions*" mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

"*Unliquidated obligations*" for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

"*Unobligated balance*" means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

143.4 Applicability.

(a) *General.* Subparts A through D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of § 143.6, or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, Subtitle D, Chapter 2, Section 583—the Secretary's discretionary grant program) and Titles I-III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (Section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of Title V, Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (Title IV-A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV-D of the Act);

(iii) Foster Care and Adoption Assistance (Title IV-E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI-AABD of the Act); and

(v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service for Children (section 13 of the Act), and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U.S.C. 236 through 241-1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) *Entitlement programs.* Entitlement programs enumerated above in § 143.4(a) (3) through (8) are subject to Subpart E.

§ 143.5 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § 143.6.

§ 143.6 Additions and exceptions

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the FEDERAL REGISTER.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

Subpart B—Pre-Award Requirements

§ 143.10 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF-424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

§ 143.11 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect: (1) New or revised Federal statutes or regulations or (2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ 143.12 Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered "high risk" if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grante or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

Subpart C—Post-Award Requirements

FINANCIAL ADMINISTRATION

§ 143.20 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

§ 143.21 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR Part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 143.43(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

§ 143.22 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a—	Use the principles in—
State, local or Indian tribal government.	OMB Circular A-87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A-122 as not subject to that circular.	OMB Circular A-122.
Educational institutions.	OMB Circular A-21.
For-profit organization other than a hospital and an organization named in OBM Circular A-122 as not subject to that circular.	48 CFR Part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

§ 143.23 Period of availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF-269). The Federal agency may extend this deadline at the request of the grantee.

§ 143.24 Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) *Qualifications and exceptions*—(1) *Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be me by costs borne by another Federa grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarde under another Federal grant.

(2) *General revenue sharing.* For th purpose of this section, general revenue sharing funds distributed unde 31 U.S.C. 6702 are not considered Fe eral grant funds.

(3) *Cost or contributions counted t wards other Federal costs-sharing r quirements.* Neither costs nor th values of third party in-kind contrib tions may count towards satisfying cost sharing or matching requireme of a grant agreement if they ha been or will be counted towards sat fying a cost sharing or matching quirement of another Federal gra agreement, a Federal procureme contract, or any other award of Fed al funds.

(4) *Costs financed by progr income.* Costs financed by progr income, as defined in § 143.25, sh not count towards satisfying a c sharing or matching requireme unless they are expressly permitted the terms of the assistance agreeme (This use of general program incom described in § 143.25(g).)

(5) *Services or property financed income earned by contractors.* C tractors under a grant may e income from the activities carried under the contract in addition to amounts earned from the party aw ing the contract. No costs of serv or property supported by this inc may count toward satisfying a sharing or matching requiren unless other provisions of the g

agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services*—(1) *Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching.

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2) (i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 143.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§ 143.25 Program income.

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income.* If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § 143.34.)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ 143.31 and 143.32.

(g) *Use of program income.* Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction.* Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) *Income after the award period.* There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

§ 143.26 Non-Federal audit.

(a) *Basic rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501-7) and Federal agency implementing regulations. The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act, that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subgrantee shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A-110, "Uniform Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations" have met the audit requirement. Commercial contractors (private forprofit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local govenments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A-110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, § 143.36 shall be followed.

CHANGES, PROPERTY, AND SUBAWARDS

§ 143.30 Changes.

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see § 143.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes*—(1) *Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds $100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 143.36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget formal the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § 143.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision requested by the subgrantee would result in a change to the grantee's ap-

proved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

§ 143.31 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§ 143.32 Equipment.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 143.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent

services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to 'take excess and disposition actions.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title.* The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow § 143.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§ 143.33 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

§ 143.34 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§ 143.35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

§ 143.36 Procurement.

(a) *States.* When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus pur-

chase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative anaylsis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of § 143.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed*—(1) *Procurement by small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than $25,000 in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 143.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals*. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price resonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see § 143.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solication has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this seciton; or

(ii) The procurement is expected to exceed $25,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed $25,000, specifies a "brand name" product; or

(iv) The proposed award over $25,000 is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than $25,000.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subconstracts exceeding $100,000, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate (Contracts other than small purchases).

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement (All contracts in excess of $10,000).

(3) Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees).

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) a supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and subgrants for construction or repair).

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) a supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of $2,00 awarded by grantees and subgrantee when required by Federal grant program legislation).

(6) Compliance with sections 103 an 107 of the Contract Work Hours an Safety Standards Act (40 U.S.C. 327 330) as supplemented by Departme of Labor regulations (29 CFR Part (Construction contracts awarded grantees and subgrantees in excess $2,000, and in excess of $2,500 other contracts which involve the e ployment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (Contracts, subcontracts, and subgrants of amounts in excess of $100,000).

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

§ 143.37 Subgrants.

(a) *States.* States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with § 143.42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grantees.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section 143.10;

(2) Section 143.11;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR Part 205, cited in § 143.21; and

(4) Section 143.50.

REPORTS, RECORDS, RETENTION, AND ENFORCEMENT

§ 143.40 Monitoring and reporting program performance.

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

§ 143.41 Financial reporting.

(a) *General.* (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more

burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extend required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report*—(1) *Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with § 143.41(e)(2)(iii) of this section.

(2) *Accounting basis.* Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accural basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) *Frequency.* The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) *Due date.* When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report*—(1) *Form.* (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(3) *Cash in hands of subgrantees.* When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one mil-

lion dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement*—(1) *Advance payments*. Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements*. Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in § 143.41(b)(3).

(e) *Outlay report and request for reimbursement for construction programs*. (1) Grants that support construction activities paid by reimbursement method.

(i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in § 143.41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in § 143.41(b)(3).

(2) Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.

(i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by § 143.41(b) (3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in § 143.41(d).

(iii) The Federal agency may substitute the Financial Status Report specified in § 143.41(b) for the Outla Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis*. The accountin basis for the Outlay Report and Re quest for Reimbursement for Con struction Programs shall be governe by § 143.41(b)(2).

§ 143.42 Retention and access require ments for records.

(a) *Applicability*. (1) This section a plies to all financial and programmati records, supporting documents, stati tical records, and other records grantees or subgrantees which are:

(i) Required to be maintained by th terms of this part, program regul tions or the grant agreement, or

(ii) Otherwise reasonably consider as pertinent to program regulations the grant agreement.

(2) This section does not apply records maintained by contractors subcontractors. For a requirement place a provision concerning records certain kinds of contracts, § 143.36(i)(10).

(b) *Length of retention period*. Except as otherwise provided, reco must be retained for three years fr the starting date specified in pa graph (c) of this section.

(2) If any litigation, claim, nego tion, audit or other action involv the records has been started bef the expiration of the 3-year per the records must be retained u completion of the action and res tion of all issues which arise from or until the end of the regular 3- period, whichever is later.

(3) To avoid duplicate recordk ing, awarding agencies may make cial arrangements with grantees subgrantees to retain any rec which are continuously needed joint use. The awarding agency wi quest transfer of records to its cus when it determines that the re possess long-term retention When the records are transferr or maintained by the Federal ag

the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) *Starting date of retention period*—(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records*—(1) *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

§ 143.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all

or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see § 143.35).

§ 143.44 Termination for convenience.

Except as provided in § 143.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § 143.43 or paragraph (a) of this section.

Subpart D—After-The-Grant Requirements

§ 143.50 Closeout.

(a) *General.* The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) *Reports.* Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) *Final performance or progress report.*

(2) *Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable).*

(3) *Final request for payment (SF-270) (if applicable).*

(4) *Invention disclosure (if applicable).*

(5) *Federally-owned property report.* In accordance with § 143.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§ 143.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § 143.42;

(d) Property management requirements in §§ 143.31 and 143.32; and

(e) Audit requirements in § 143.26.

§ 143.52 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an adminstrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E—Entitlement [Reserved]

PART 144—DISCOUNTED PREPAYMENT OF DISASTER HOME LOANS

Sec.

144.1 General information.
144.3 Applicability and eligibility.
144.5 Proposal for prepayment.
144.7 Acceptance of proposal.
144.9 Calculation of discount.
144.11 Tax implication.

Authority: Sec. 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6).

Source: 52 FR 31527, Aug. 20, 1987, unless otherwise noted.

§ 144.1 General information.

Under this one-time program for Fiscal Year 1987, the SBA may provide a discount for prepayment in full of an outstanding disaster home loan to those borrowers that meet the conditions established in this subpart.

§ 144.3 Applicability and eligibility.

This discount program is applicable to all disaster home loans (see 13 CFR § 123.1 through 123.29 for details) which have been fully disbursed and outstanding for a period of 12 months at the time of offer have at least 12 months remaining,'and which are in a current status. A loan in "Current Status" as defined for this regulation is one which is paying according to the current payment schedule or the borrower is late on one payment. In no case will the offer be made to a borrower whose loan is more than 31 days past due.

§ 144.5 Proposal for prepayment.

(a) The SBA will calculate the appropriate discount and make a written offer to each eligible disaster home loan borrower. The offer will be mailed by the SBA to the address now used for the monthly billing of the loan.

(b) Upon issuance by SBA of the proposal for discounted prepayment, the borrower will have a specified period of time to respond to the offer. A timely acceptance will be signified by payment of the amount identified in the offer by the deadline stated in the offer. Late payment or nonresponse will be considered a decline of the offer.

(c) The issue date will be the date on which SBA mails the offer to the borrower. The deadline will be a date specified in the offer.

(d) A borrower who feels he/she should have been contacted but did not receive an offer will have a fair opportunity to discuss their loan with SBA. Such presentation will be made to the SBA office servicing the loan.

§ 144.7 Acceptance of proposal.

(a) A borrower accepting the proposal to prepay his/her loan at a discount shall forward the payment coupon provided with the proposal and submit payment for the discounted amount to be received by the Small Business Administration, Denver, Colorado 80259-0001 not later than the deadline specified in the offer.

(b) The receipt of the offer for discounted prepayment does not relieve the disaster home loan borrower from the requirement for the periodic payment under the loan until such time as the offer is accepted by the borrower and payment made to SBA. Rejection of the offer by the borrower does not affect the payment terms of the loan.

(c) Upon receipt of the acceptance and payment in full of the discounted amount, SBA will return the promissory note stamped paid-in-full and take any appropriate action necessary to release all encumbrances for any collateral on the loan and to make proper recordation releasing the note back to the borrower.

§ 144.9 Calculation of discount.

The SBA will establish a present value of the remaining payments required under a disaster home loan by calculating a price on that loan which would, if the loan were purchased and held to maturity, produce a yield or return to the purchaser equal to the market interest rate determined by the Administrator. A standard net present value calculation will used. The discount rate will be determined by the Administrator after consultation with the financial advisor and consideration of other factors relevant to this program.

§ 144.11 Tax implication.

SBA will advise borrowers that the discounted amount may be considered taxable income and will advise the Internal Revenue Service of the amount of discount applicable to each loan which is prepaid.

PART 145—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

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Sec.
Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions
Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: 15 U.S.C. 634(b)(6), Executive Order 12549.

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Subpart A—General

§ 145.100 Purpose.

(a) Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of Executive Order 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the Executive order by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of "ineligible" in § 145.105(i)), and participants who have voluntarily excluded themselves from participation in covered transactions

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

§ 145.105 Definitions.

(a) *Adequate evidence.* Information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) *Affiliate.* Persons are affiliates of each another if, directly or indirectly, either one controls or has the power to control the other, *or*, a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

(c) *Agency.* Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

(d) *Civil judgment.* The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801-12).

(e) *Conviction.* A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

(f) *Debarment.* An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred."

(g) *Debarring official.* An official authorized to impose debarment. The debarring official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(h) *Indictment.* Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(i) *Ineligible.* Excluded from participation in Federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for exemple, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

(j) *Legal proceedings.* Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State of local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

(k) *Nonprocurement List.* The portion of the *List of Parties Excluded from Federal Procurement or Nonprocurement Programs* complied, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(l) *Notice.* A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

(m) *Participant.* Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

(n) *Person.* Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

(o) *Preponderance of the evidence.* Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(p) *Principal.* Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

(1) Principal investigators.

(2) Securities brokers and dealers under the section 7(a) Loan, Certified Development Company (CDC) and Small Business Investment Company (SBIC) Programs.

(q) *Proposal.* A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

(r) *Respondent.* A person against whom a debarment or suspension action has been initiated.

(s) *State.* Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the

nited States, or any agency of a
ate, exclusive of institutions of
gher education, hospitals, and units
local government. A State instru-
entality will be considered part of
e State government if it has a writ-
n determination from a State gov-
nment that such State considers
at instrumentality to be an agency
the State government.

(t) *Suspending official.* An official
thorized to impose suspension. The
spending official is either:

(1) The agency head, or

(2) An official designated by the
gency head.

(u) *Suspension.* An action taken by a
spending official in accordance with
ese regulations that immediately ex-
udes a person from participating in
overed transactions for a temporary
eriod, pending completion of an in-
estigation and such legal, debarment,
r Program Fraud Civil Remedies Act
roceedings as may ensue. A person so
xcluded is "suspended."

(v) *Voluntary exclusion or voluntari-*
excluded. A status of nonparticipa-
on or limited participation in covered
ansactions assumed by a person pur-
uant to the terms of a settlement.

(w) *SBA.* The Small Business Admin-
stration.

3 FR 19176, 19204, May 26, 1988, as
mended at 53 FR 19176, May 26, 1988]

145.110 Coverage.

(a) These regulations apply to all
ersons who have participated, are
urrently participating or may reason-
bly be expected to participate in
ransactions under Federal nonprocur-
ment programs. For purposes of
nese regulations such transactions
vill be referred to as "covered transac-
ions."

(1) *Covered transaction.* For pur-
oses of these regulations, a covered
ransaction is a primary covered trans-
ction or a lower tier covered transac-
ion. Covered transactions at any tier
eed not involve the transfer of Feder-
l funds.

(i) *Primary covered transaction.*
xcept as noted in paragraph (a)(2) of
his section, a primary covered trans-
ction is any nonprocurement transac-
ion between an agency and a person,
egardless of type, including: grants,
ooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) *Lower tier covered transaction.* A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently $25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(*1*) Principal investigators.

(*2*) Providers of federally-required audit services.

(*3*) Securities brokers and dealers under the section 7(a) Loan, Certified Development Company (CDC), and Small Business Investment Company (SBIC) Programs.

(*4*) Applicant representatives under the section 7(a) Loan, Certified Development Company (CDC), Small Business Investment Company (SBIC), Small Business Development Center (SBDC) and section 7(j) Programs.

(*5*) Providers of professional services under the section 7(a) Loan, Certified Development Center (CDC), Small Business Investment Company (SBIC), Small Business Development Center (SBDC), and section 7(j) Programs.

(2) *Exceptions.* The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of these regulations would be prohibited by law.

(b) *Relationship to other sections.* This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, "Effect of Action," § 145.200, "Debarment or suspension," sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in § 145.110(a). Sections 145.325, "Scope of debarment," and 145.420, "Scope of suspension," govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal procurement activities.* Debarment and suspension of Federal procurement contractors and subcontractors under Federal procurement contracts are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4.

[53 FR 19176, 19204, May 26, 1988, as amended at 53 FR 19176, May 26, 1988]

§ 145.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

Subpart B—Effect of Action

§ 145.200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the executive branch of the Federal Government for the period of their debarment or suspension. Accordingly, no agency shall enter into primary covered transactions with such debarred or suspended persons during such period, except as permitted pursuant to § 145.215.

(b) *Loser tier covered transactions.* Except to the extent prohibited by law, persons who have been debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see § 145.110(a)(1)(ii) for the period of their debarment or suspension.

(c) *Exceptions.* Debarment or suspension does not affect a person's eligibility for:

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

§ 145.205 Ineligible persons.

Persons who are ineligible, as defined in § 145.105(i), are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

§ 145.210 Voluntary exclusion.

Persons who accept voluntary exclusions under § 145.315 are excluded in accordance with the terms of their settlements. SBA shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

§ 145.215 Exception provision.

SBA may grant an exception permitting a debarred, suspended, or voluntarily excluded person to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and § 145.200 of this rule. However, in accordance with the President's stated intention in the Executive order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with § 145.505(a).

§ 145.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in § 145.215.

§ 145.225 Failure to adhere to restrictions.

Except as permitted under § 145.215 or § 145.220 of these regulations, a participant shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate. A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction (see Appendix B), unless it knows that the certification is erroneous. An agency has the burden of proof that such participant did knowingly do business with such a person.

Subpart C—Debarment

§ 145.300 General.

The debarring official may debar a person for any of the causes in § 145.305, using procedures established in §§ 145.310 through 145.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

§ 145.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ 145.300 through 145.314 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, the effective date of these regulations, or a procurement debarment by any Federal agency taken pursuant to 48 CFR Subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in § 145.215 or § 145.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted; or

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 145.315 or of any settlement of a debarment or suspension action.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

§ 145.310 Procedures.

SBA shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§ 145.311 through 145.314.

§ 145.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

§ 145.312 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

(a) That debarment is being considered;

(b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(c) Of the cause(s) relied upon under § 145.305 for proposing debarment;

(d) Of the provisions of § 145.311 through § 145.314, and any other SBA procedures, if applicable, governing debarment decisionmaking; and

(e) Of the potential effect of a debarment.

§ 145.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

(3) In accordance with § 145.314(b)(2), the debarring official may refer cases involving disputed material facts to the Office of Hearings and Appeals, which shall conduct any additional proceedings necessary in accordance with the procedures contained in Part 134 of this title. Upon conclusion of such proceedings, the Office of Hearings and Appeals shall issue a recommended decision to the debarring official including proposed findings of facts and conclusions of law.

[53 FR 19176, 19204, May 26, 1988, as amended at 53 FR 19176, May 26, 1988]

§ 145.314 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(i) The Office of Hearings and Appeals shall conduct any proceedings regarding disputed material facts necessary under this section.

(ii) Any party to the debarment proceeding may file exceptions to the recommended decision with the debarring official in accordance with 13 CFR 134.35.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c)(1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in § 145.215.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

[53 FR 19176, 19204, May 26, 1988, as amended at 53 FR 19176, May 26, 1988]

§ 145.315 Settlement and voluntary exclusion.

(a) When in the best interest of the Government, SBA may, at any time, settle a debarment or suspension action.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see Subpart E).

§ 145.320 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the causes(s). Generally, a debarment should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed. If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of §§ 145.311 through 145.314 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

§ 145.325 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see §§ 145.311 through 145.314).

(b) *Imputing conduct.* For purpose of determining the scope of deba ment, conduct may be imputed as fo lows:

(1) *Conduct imputed to participan* The fraudulent, criminal or other se ously improper conduct of any office director, shareholder, partner, emplo ee, or other individual associated wi a participant may be imputed to t participant when the conduct occurr in connection with the individua performance of duties for or on beh of the participant, or with the parti pant's knowledge, approval, or acqui cence. The participant's acceptance the benefits derived from the cond shall be evidence of such knowled approval, or acquiescence.

(2) *Conduct imputed to individu associated with participant.* T fraudulent, criminal, or other serio ly improper conduct of a particip may be imputed to any officer, di tor, shareholder, partner, employee other individual associated with

participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

Subpart D—Suspension

§ 145.400 General.

(a) The suspending official may suspend a person for any of the causes in § 145.405 using procedures established in §§ 145.410 through 145.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in § 145.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

§ 145.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§ 145.400 through 145.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in § 145.305(a); or

(2) That a cause for debarment under § 145.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ 145.410 Procedures.

(a) *Investigation and referral.* Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

(b) *Decisionmaking process.* SBA shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in § 145.411 through § 145.413.

§ 145.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under § 145.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of § 145.411 through § 145.413 and any other SBA procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

§ 145.412 Opportunity to contest suspension.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment, or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

(3) In accordance with § 145.413(b)(2), the suspending official may refer cases involving disputed material facts to the Office of Hearings and Appeals, which shall conduct any additional proceedings necessary in accordance with the procedures contained in Part 134 of this title. Upon conclusion of such proceedings, the Office of Hearings and Appeals shall issue a recommended decision to the suspending official including proposed findings of facts and conclusions of law.

[53 FR 19176, 19204, May 26, 1988, as amended at 53 FR 19176, May 26, 1988]

§ 145.413 Suspending official's decision.

The suspending official may modify or terminate the suspension (for example, see § 145.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(a) *No additional proceedings necessary.* In actions: based on an indictment, conviction, or civil judgment; in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(i) The Office of Hearings and Appeals shall conduct any proceedings regarding disputed material facts necessary under this section.

(ii) Any party to the suspension proceeding may file exceptions to the recommended decision with the suspending official in accordance with 13 CFR 134.35.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent.

[53 FR 19176, 19204, May 26, 1988, as amended at 53 FR 19176, May 26, 1988]

§ 145.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending of-

ial or as provided in paragraph (b)
this section.
b) If legal or administrative pro-
edings are not initiated within 12
onths after the date of the suspen-
on notice, the suspension shall be
rminated unless an Assistant Attor-
y General or United States Attor-
y requests its extension in writing,
which case it may be extended for
additional six months. In no event
ay a suspension extend beyond 18
onths, unless such proceedings have
en initiated within that period.
c) The suspending official shall
tify the Department of Justice of an
pending termination of a suspen-
on, at least 30 days before the 12-
onth period expires, to give that De-
rtment an opportunity to request an
tension.

45.420 Scope of suspension.

The scope of a suspension is the
me as the scope of a debarment (see
45.325), except that the procedures
§§ 145.410 through 145.413 shall be
ed in imposing a suspension.

ubpart E—Responsibilities of GSA, Agency and Participants

45.500 GSA responsibilities.

(a) In accordance with the OMB
idelines, GSA shall compile, main-
in, and distribute a list of all persons
ho have been debarred, suspended,
voluntarily excluded by agencies
nder Executive Order 12549 and
ese regulations, and those who have
en determined to be ineligible.
(b) At a minimum, this list shall in-
cate:
(1) The names and addresses of all
barred, suspended, ineligible, and
luntarily excluded persons, in alpha-
tical order, with cross-references
hen more than one name is involved
a single action;
(2) The type of action;
(3) The cause for the action;
(4) The scope of the action;
(5) Any termination date for each
sting; and
(6) The agency and name and tele-
hone number of the agency point of
ntact for the action.

§ 145.505 SBA responsibilities.

(a) The agency shall provide GSA with current information concerning debarments, suspension, determinations of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, the agency shall also provide GSA and OMB with information concerning all transactions in which SBA has granted exceptions under § 145.215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in § 145.500(b) and of the exceptions granted under § 145.215 within five working days after taking such actions.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) Agency officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (Tel. #).

(e) Agency officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

§ 145.510 Participants' responsibilities.

(a) *Certification by participants in primary covered transactions.* Each participant shall submit the certification in Appendix A to this part for it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, each participant may, but is not required to, check the Nonprocurement List for its principals (Tel. #). Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) *Certification by participants in lower tier covered transactions.* (1) Each participant shall require participants in lower tier covered transactions to include the certification in Appendix B to this part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they determine the eligiblity of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants (Tel.).

(c) *Changed circumstances regarding certification.* A participant shall provide immediate written notice to SBA if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposals.

APPENDIX A—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall privide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequen

by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State of local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

APPENDIX B—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILTY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered

transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily exclu
from participation in this transaction, in
dition to other remedies available to
Federal Government, the department
agency with which this transaction origi
ed may pursue available remedies, includ
suspension and/or debarment.

Certification Regarding Debarment, Sus
sion, Ineligibility and Voluntary Ex
sion—Lower Tier Covered Transaction

(1) The prospective lower tier particip
certifies, by submission of this propo
that neither it nor its principals is prese
debarred, suspended, proposed for de
ment, declared ineligible, or voluntarily
cluded from participation in this tran
tion by any Federal department or age

(2) Where the prospective lower tier
ticipant is unable to certify to any of
statements in this certification, such
spective participant shall attach an expl
tion to this proposal.

CHAPTER III—ECONOMIC DEVELOPMENT ADMINISTRATION, DEPARTMENT OF COMMERCE

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PART 301—ESTABLISHMENT AND ORGANIZATION

Sec.

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301.70 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: Sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); and Dept. of Commerce Organization Order 10-4 (Apr. 1 1970).

SOURCE: 38 FR 2260, Jan. 23, 1973, unless otherwise noted.

Subpart A—Introduction

§ 301.1 Purpose.

The purpose of the Economic Development Administration is to provide assistance in economically distressed areas and regions in order to alleviate conditions of substantial and persistent unemployment and underemployment and to establish stable and diversified economies.

§ 301.2 Definitions.

"Act" used in this chapter means the Public Works and Economic Development Act of 1965, as amended.

"Administration," "Agency," or *"EDA"* means the Economic Development Administration.

"Advisory Committee" means the Committee on Regional Economic Development appointed by the Secretary in accordance with section 602 of the Act.

"Alaskan Native Village" means a town or village site occupied and used by natives of Alaska—Indians, Eskimos, and Aleuts pursuant to the 1926 Native Townsite Act or recognized as a native village under the Alaska Native Claims Settlement Act, together with any contiguous corporate boundary adjustments thereof under the laws of the State of Alaska and such additional lands as are authorized to be included within the meaning of "Indian reservation" and "trust or restricted Indian-owned land areas" by Pub. L. 92-203, section 2, Dec. 18, 1971, 85 Stat. 688, 43 U.S.C. 1601.

"ARA" means the Area Redevelopment Administration (now expired) which was an experimental program designed to cope with the problems of long-term unemployment and underemployment.

"Assistant Secretary" means the Assistant Secretary of Commerce for Economic Development.

"Community development corporation" means: (a) Any public organization or association created under the authority of State or local law to fur

her the development of the area but vhich has no power of taxation; and

(b) Any private nonprofit organiza-ion whose purpose is to further the levelopment of the area.

"Designated Area" means any area r center which has been determined y the Assistant Secretary pursuant to ections 401 or 403 of the Act as eligi-le to apply for financial assistance.

"Designation" means the act of the Assistant Secretary whereby a geo-raphic area, district or economic de-elopment center is determined to be eligible to apply for assistance under he Act.

"Disaster Area" means areas desig-ated under title IV of the Act and lesignated by the President under the Disaster Relief Act of 1970 (Pub. L. 1-606) or Disaster Relief Act of 1974 Pub. L. 93-288). The disaster area shall remain such for as long a period as it retains both EDA and Disaster designations, and such concurrent des-ignations have not exceeded 1 year in duration.

"Economic Development Center" means any geographic area within the United States having a population of 250,000 or less which has been identified in an approved district overall economic development program as having the potential for economic growth and the ability to alleviate the economic distress of the redevelopment areas within the district.

"Economic Development District" means a geographic area composed of adjoining and economically related areas which are of proper size to permit effective economic planning, including at least one redevelopment area and one or more economic growth center(s) and which has been designated by the Assistant Secretary.

"Economic growth center" means an economic development center or redevelopment center, designated or recognized by the Assistant Secretary, whose growth may be reasonably expected to contribute significantly to the alleviation of distress in the district's redevelopment areas.

"Indian tribe" means the governing body of a tribe, nonprofit Indian corporation (restricted to Indians), Indian authority or other tribal organization or entity or Alaskan Native Village.

"Local Government" means any municipality, county, town, parish, or other general purpose political subdivision of a State.

"OEDP" means an Overall Economic Development Program (or orderly plan of action) pertaining to an area or district.

"Planning Grants" means grants for administrative expenses to eligible applicants under section 301(b) of the Act for planning purposes.

"Public Works Impact Program Area" means any community or neighborhood (defined without regard to political or other subdivisions or boundaries) which has been designated by the Assistant Secretary pursuant to section 401(a)(6) of the Act and which is exempted from the requirements of paragraphs (a)(1) (A) and (C) of section 101 of the Act.

"Qualified Area" means an area which meet the criteria of the Act for designation as "redevelopment area".

"Redevelopment Area" means any geographic area which has been designated by the Assistant Secretary pursuant to section 401 of the Act and is eligible for the full range of EDA assistance.

"Redevelopment center" means any geographic area constituting all or part of a redevelopment area which has been identified in an approved district overall economic development program as having sufficient size and potential to foster the economic growth activities necessary to alleviate the distress of the redevelopment areas composing the economic development district.

"Secretary" means the Secretary of Commerce, the Assistant Secretary when exercising authorities delegated by the Secretary of Commerce, or any person duly authorized to act for the Secretary of Commerce in his stead.

"Section 302 Planning Grants" means economic development planning grants authorized under section 302 of the Act.

"Special Impact Area" means:

(a) Any community or neighborhood (defined without regard to political or other subdivision or boundaries) which has been designated by the Assistant Secretary pursuant to section 401(a)(6) of the Act. It does not include a Public Works Redevelopment Area which has been designated by the Assistant Secretary pursuant to section 401(a)(6) of the Act.

(b) Any area selected as special impact area (as defined under the Economic Opportunity Act of 1964, as amended), funded by the Office of Economic Opportunity, and designated by the Assistant Secretary.

"*Sudden rise area*" means any area which has been designated by the Assistant Secretary as a redevelopment area under section 401(a)(4) of the Act.

"*Supplemental Grant*" means the amount of additional grant assistance provided pursuant to section 101(c) of the Act.

"*Working capital*" means the excess of current assets over current liabilities and identifies the relatively liquid portion of total enterprise capital which constitutes a margin or buffer or meeting obligations within the ordinary operating cycle of the business.

[38 FR 2260, Jan. 23, 1973, as amended at 39 FR 12859, Apr. 9, 1974, 39 FR 44959, Dec. 30, 1974; 42 FR 5598, Jan. 28, 1977; 45 FR 55701, Aug. 21, 1980]

Subpart B—Description of Program Areas

§ 301.20 Public works and development facility grants.

(a) Direct grants are authorized for:

(1) Public works, public service and development facility projects which directly or indirectly contribute to long-range economic growth or benefit long-term unemployed and members of low-income families in redevelopment areas, and parts of economic development districts.

(2) Public works, public service and development facility projects which provide immediate useful work to the unemployed and underemployed of the project area.

(b) Supplementary grants to augment the direct grants received under the Act or to augment the basic grants under other Federal grant-in-aid programs may be provided to public works, public service and development facility projects which directly or indirectly contribute to long-range economic growth or benefit long-term unemployed and members of low-income families in redevelopment areas, and parts of economic development districts.

(c) Under section 304 of the Act the Secretary is authorized to make grants to the States for the purpose of supplementing or making grants and loans authorized under Titles I, II, and IV of the Act.

[38 FR 2260, Jan. 23, 1973, as amended at 39 FR 44959, Dec. 30, 1974]

§ 301.21 Loans and guarantees.

(a) Loans are authorized for public works, public service, and development facility projects in redevelopment areas and parts of economic development districts.

(b) Loans are authorized for industrial and commercial purposes in redevelopment areas and parts of economic development districts.

(c) Guarantees are authorized fo
loans made to private borrowers b
private lending institutions and fo
rental payments of loans in redevelop
ment areas and parts of economic de
velopment districts.

[39 FR 44959, Dec. 30, 1974]

§ 301.22 Technical assistance.

(a) Technical assistance in the for
of direct assistance by EDA personne
payment to other Federal agencie
contracts, and grants may be extende
to redevelopment areas and oth
areas that have substantial need f
such assistance. Any such technical
sistance must be useful in alleviati
or preventing conditions of excess
unemployment or underemploymen

(b) Planning and administrat
grants are available to eligible ap
cants.

(c) EDA conducts a continuing
gram of study, training and resea
in the problems of economic devel
ment through members of its st
payments to other Federal agenc
contracts, and grants.

(d) EDA provides technical as
ance for national projects to nati
or public associations or public bo

(e) EDA aids redevelopment a
and other areas by furnishing to i
ested individuals, communities, in
tries, and enterprises within

areas any assistance, technical information, market research, or other forms of assistance, information, or advice which would be useful in alleviating or preventing conditions of excessive unemployment or underemployment within such areas.

§ 301.23 Special economic development and adjustment assistance.

Grants may be made to States, political subdivisions of States, redevelopment areas, economic development districts, and Indian tribes to meet special needs related to existing or threatened long term unemployment or low family income levels and arising from economic dislocation. Such grants may be used for public facilities, public services, business development, planning, unemployment compensation, rent supplements, mortgage payment assistance, research, technical assistance, training, relocation of individuals, and other appropriate assistance.

[39 FR 44959, Dec. 30, 1974]

Subpart C—Description of Organization

§ 301.30 Washington office.

The central and principal office of the Economic Development Administration is in the Department of Commerce, 14th Street at Constitution Avenue NW., Washington, DC 20230.

§ 301.31 Economic Development Administration Regional Offices.

Locations:

(a) *Philadelphia.* Philadelphia, Pennsylvania. Serving: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, Virgin Islands, and West Virginia.

(b) *Atlanta.* Atlanta, Georgia. Serving: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

(c) *Denver.* Denver, Colorado. Serving: Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.

(d) *Chicago.* Chicago, Illinois. Serving: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

(e) *Seattle.* Seattle, Washington. Serving: Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Washington, and Northern Mariana Islands.

(f) *Austin.* Austin, Texas. Serving: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

[48 FR 6524, Feb. 14, 1983]

§ 301.32 Assistant Secretary.

The Assistant Secretary for Economic Development directs the programs and is responsible for the conduct of all activities, including overall direction and coordination of the Regional Offices of EDA, subject to the policies and directives prescribed by the Secretary of Commerce. The Assistant Secretary also directs the Executive Secretariat.

(a) The Executive Secretariat receives all correspondence addressed to the Office of Assistant Secretary, and assigns it to the appropriate office for action; records controlled and non-controlled correspondence; maintains prompt follow-up of replies to ensure that deadlines are met; maintains correspondence and policy files; and provides a selective reference service to files as requested by EDA Officials.

[48 FR 34417, July 29, 1983]

§ 301.33 Deputy Assistant Secretary.

The Deputy Assistant Secretary assists the Assistant Secretary in all matters affecting EDA; and performs the duties of the Assistant Secretary during the latter's absence. The Deputy Assistant Secretary also directs the Office of Compliance. Regional Directors report directly to the Deputy Assistant Secretary.

(a) The Office of Compliance conducts Section 702 studies, where appropriate; recommends areas for designation, as requested; coordinates all of EDA's environmental activities; develops, as appropriate, agency procedures for complying with environmental legislation, regulations, and executive orders; serves as EDA's Official under the provisions of the National Environmental Policy Act of 1969 (NEPA); establishes effective systems throughout EDA to obtain and monitor reports concerning the program of equality of opportunity and ensures compliance with Civil Rights Guidelines, Department and EDA Regulations; establishes report requirements to ensure equality of opportunity by participants in economic development programs, conducts on-site inspections, and receives, investigates, and adjusts complaints; evaluates EDA experience relating to the equal opportunity programs; and establishes uniform equal opportunity standards and procedures to be followed in reviewing EDA projects.

(b) The Regional Directors (along with the appropriate Deputy Assistant Secretary (DAS)) have review and clearance responsibilities concerning certain types of amendments; approve disbursements and close out grant project audits; approve deferments of certain payments concerning loans and leases; and have certain powers and duties concerning Economic Development Districts, Indian organizations and other Areas. Regional Directors also approve Overall Economic Development Programs (OEDP). Regional Directors have the authority to approve and administer project funding authorized under Section 304 of the Act, except for new funds for Section 304 Supplementary grants (which authority is reserved by the Assistant Secretary).

[48 FR 34417, July 29, 1983]

§ 301.34 Deputy Assistant Secretary for Operations.

The Deputy Assistant Secretary for Operations reports to the Deputy Assistant Secretary; and provides coordinated direction of headquarters activities related to financial and technical assistance projects, which will improve local economies, and integrate EDA's investment and planning activities. He/she also develops, in conjunction with the Office of the Inspector General, criteria for audits, including adherence to EDA policy and programmatic requirements. In addition, he/she develops policies and procedures for the implementation of the following program authorities: Public Works; Technical Assistance; Title IX Special Adjustment Assistance; Title IX Long-Term Economic Deterion tion; and Local Public Works. The Deputy Assistant Secretary for Operations oversees and coordinates the Section 304 program of the Act; and monitors and services projects developed under: The Comprehensive Employment Training Act of 1973, as amended (29 U.S.C. 801 *et seq.*); Section 217 of Pub. L. 89-298 (42 U.S.C. 3142a) relating to river and harbor projects; 41 CFR Part 101-43, Public Contracts and Property Management, for the acquisition, use and eventual disposition of excess personal property obtained by the Administration and furnished to the Administration's projects grantees and cost reimbursement type contractors; The Local Public Works Capital Development and Investment Act of 1976, which is Title I of the Public Works Employment Act of 1976 (Pub. L. 94-369, 42 U.S.C. 6701 *et seq.*), as amended by Pub. L. 95-28; Pub. L. 94-427, 90 Stat 1336-1339, relating to the XIII International Olympic Winter Games; and the Community Emergency Drough Relief Act of 1977, Pub. L. 95-31. I addition, the Deputy Assistant Secre tary for Operations directs and supe vises the activities of the Office (Economic Adjustment, the Office (Public Works, and the Office of Pla ning, Technical Assistance, Researc and Evaluation.

(a) The Office of Economic Adju ment coordinates and oversees the o eration of the Title IX economic dis cation program; develops policies a procedures for implementation of t program; and provides post-appro assistance, taking into account p gram and policy compliance and propriate measures to correct n compliance.

(b) The Office of Public Works is sponsible for the implementation Public Works grants and loans un the Act (Titles I, II, and IV); and Long-Term Deterioration (Title program. The Office of Public W is also responsible for the impleme tion of Title I of the Public Works ployment Act of 1976 (LPW) amended; Pub. L. 94-427, relatin the XIII International Oly

Winter Games; and the Community Emergency Drought Relief Act of 1977. In addition, the Office of Public Works develops policies and procedures for the implementation of public investment programs; directs and oversees the specific program authorities, and oversees post-approval management of all public investments, including special adjustment assistance, construction, and revolving loan projects.

(c) The Office of Planning, Technical Assistance, Research, and Evaluation oversees the monitoring of planning grants to States, cities, districts, counties, neighborhoods, metropolitan organizations, and Indian tribes; oversees and monitors technical assistance activities; conducts evaluations of EDA policies, programs, and projects to determine their effectiveness in terms of goals and objectives; and develops cost-benefit studies to aid the Assistant Secretary in making choices and decisions between alternative programs, projects, or activities for economic development; and reviews, evaluates, integrates, and disseminates the results of EDA sponsored research as well as other research findings that are relevant to EDA's objectives.

[48 FR 34417, July 29, 1983]

§ 301.35 Deputy Assistant Secretary for Finance.

The Deputy Assistant Secretary for Finance reports to the Deputy Assistant Secretary; and provides coordinated direction of headquarters and regional activities related to EDA's direct loan and loan guaranty programs. The Deputy Assistant Secretary for Finance also develops policies and procedures for the administration of Section 202 of the Public Works and Economic Development Act of 1965, as amended; and monitors and services projects developed under Chapters 3 and 4 of Title II of the Trade Act of 1974 as amended (19 U.S.C. 234 *et seq.*, 2371 *et seq.*), and predecessor statutes, as they pertain to providing monitoring and servicing for those adjustment assistance projects to firms which were certified eligible to apply and were approved prior to the transfer of functions to the Under Secretary for International Trade. The Deputy Assistant Secretary for Finance directs and supervises the activities of the Office of Loan Management, the Office of Special Servicing, and the Office of Liquidation.

(a) The Office of Loan Management oversees and monitors the servicing activities of the Regional Offices; conducts the loan administration of EDA loans/guarantees requiring servicing, so as to sustain or restore EDA projects as viable operations, including modifications of existing loan/guaranty terms and conditions; analyzes and recommends for approval or denial, modification actions to existing EDA loan/guaranty terms and conditions as requested by the Regional Offices; and coordinates and oversees the management information system relating to Regional Office portfolio administration and administration of the Office of Loan Management portfolio.

(b) The Office of Special Servicing develops, implements, and evaluates the policies, standards and procedures for the operation of the direct loan and loan guaranty programs in headquarters and the Regional Offices; performs the final financial and programmatic reviews of any application for new loan/guaranty assistance received in EDA; recommends the expenditure of current funds for new projects or for the injection of current funds for previously approved projects, and conducts the post approval administration of all EDA loans/guarantees within the headquarters portfolio that are determined to have the highest risk, greatest exposure, greatest programmatic sensitivity; and performs appropriate workout actions, such as restructuring, refinancing, obtaining new capital, or arranging for takeover by another organization, when it is determined to be in the best interest of the government.

(c) The Office of Liquidation conducts the orderly liquidation of EDA projects incapable of continuing viable operations, so as to dispose of the project assets, acquired at foreclosure or otherwise, to the best advantage of the government; directs all activities in connection with the care and preservation of EDA's collateral and security position in EDA loans/guarantees; and requests the assistance of, and works with, EDA's Office of Chief Counsel and other Federal agencies toward the orderly liquidation of EDA loans/guarantees.

[48 FR 34418, July 29, 1983]

§ 301.36 Management and Administration Directorate.

The Management and Administration Directorate is headed by a Director who reports to the Deputy Assistant Secretary. The Director is responsible for providing the full range of administrative services and for management and organization analysis and evaluation functions. These functions are carried out through the Affirmative Action Officer, the Budget Division, the Management Analysis and Services Division, the Accounting Division, the Information Systems and Services Division, and the Personnel Management Division.

(a) The Affirmative Action Officer resolves discrimination complaints in accordance with the provisions of Title VII of the Civil Rights Act, and administers EDA's Affirmative Action Program.

(b) The Budget Division develops and prepares the annual budget for EDA; is responsible for the total financial program of EDA, and for the fiscal aspects of EDA programs entrusted to other Federal agencies; and reviews and monitors a fiscal control system for both program and administrative expenses consistent with the requirements of the Anti-Deficiency Act, which shall include, but not be restricted to allotment of funds, operating budgets, employment limitations, and analyses of reports and proposed actions relating thereto.

(c) The Management Analysis and Services Division conducts organizational and management studies and surveys; plans and conducts a program for achieving operational maximum economy, effectiveness, and efficiency and for obtaining optimum personnel utilization; develops and conducts a program for the efficient management of all official records, including an issuance system for administrative and program orders, and the design and control of official forms; and develops and administers a report control system for all administrative and operational reports. The Managemen Analysis and Services Division also provides, or arranges for administrative services for EDA headquarters and, as required, for the Regional Offices, including the procurement of administrative supplies, vehicle hire, furniture, equipment, and the distribution of printed and bound materials; evaluates, reports on, and makes recommendations on the utilization of space, supplies, equipment, communications, and related services within EDA; and serves as liaison with the Office of the Secretary on administrative matters. In addition, the Management Analysis and Services Division, in conjunction with the Office of General Counsel, prepares or arranges for an appropriate response to all inquiries for Privacy Act or Freedom of Information requests.

(d) The Accounting Division develops and maintains accounting systems and prepares financial reports for internal and external use, according t the needs of management, the requirements of laws or regulations, and established policies; provides accountin support for effective control of al funds administered, to present accurately the status of the appropriate funds within the requirements of th Anti-Deficiency Act, and as require for good management by the progra officials; analyzes financial and ope ating data to assure that financial an management policies are being fo lowed; and serves as the liaison wit the Office of the Secretary and oth Federal Agencies in all accounti matters.

(e) The Information Systems a Services Division plans, develops, quires, and coordinates the use automatic data processing systems a equipment for EDA; provides da processing services, including the co duct of feasibility studies and the velopment of systems and progra for the application of automatic d processing techniques; develops maintains a comprehensive infor tion and data base system to m specified requirements for administ tive, planning, operational, progr management and program evaluat purposes; and provides periodic special summary reports on curr optional and performance comparisons to planned goals.

(f) The Personnel Management Division plans, organizes, and administers staffing services such as recruitment and placement, appointment, promotion, and separation; manages other personnel programs including employee relations, employee training and development, employee recognition and incentives, labor-management relations, position management and classification, and various employee services and benefits programs; maintains a processing and filing system for all personnel actions; and provides planning and administrative support to EDA's Equal Employment Opportunity programs.

[48 FR 34418, July 29, 1983]

§ 301.37 Office of the Chief Counsel.

The Office of the Chief Counsel renders all necessary legal services, subject to the provisions of Department Organization Order 10-6; has primary responsibility for the preparation, coordination, and clearance of all legislation, regulations, and external orders subject to the provisions of applicable Departmental Orders; and provides the legal services review required to administer all EDA projects.

[48 FR 34419, July 29, 1983]

Subpart D—Disclosure of Information to the Public

Source: 40 FR 12769, Mar. 21, 1975, unless otherwise noted.

§ 301.50 Disclosure of information to the public.

This subpart describes the arrangements whereby the materials specified in 5 U.S.C. 552(a)(2) and repeated below, § 301.52(a), are made available for public inspection and copying, and the procedures and other conditions whereby identifiable records requested by persons may be made available to them under 5 U.S.C. 552(a)(3).

§ 301.51 Publication in the Federal Register.

Materials required to be published in the Federal Register under 5 U.S.C. 552(a)(1) and repeated below, § 301.53, shall be published in the Federal Register and shall, to the extent practicable and to further assist the public, be made available for inspection and copying at the facility identified in § 301.52(c).

§ 301.52 Availability of materials for inspection and copying.

(a) In accordance with 5 U.S.C. 552(a)(2) and other provisions of law, EDA shall maintain a reference facility for the public inspection and copying of:

(1) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases.

(2) Those statements of policy and interpretations which have been adopted by EDA and are not published in the Federal Register.

(3) Administrative staff manuals and instructions to staff that affect a member of the public.

(4) A current index, EDA Directive Systems Index, providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required to be made available by section 552(a)(2). Section 552(a)(2) also requires indexes to be published at least quarterly unless an agency claims an exemption in the Federal Register. EDA is exempted from the requirements to maintain a quarterly index on the grounds that quarterly publication would be unnecessary and impracticable because of infrequent changes in the index.

(5) Additional materials as the Assistant Secretary of Commerce for Economic Development in his discretion considers desirable and practicable to make available for the convenience of the public.

(b) In order to prevent unwarranted invasion of personal privacy, EDA may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction, and shall, in each such case, explain in writing the justification for the deletion.

(c) The above materials may be inspected in the Office of Public Affairs, EDA, Room 7019, U.S. Department of Commerce Building, 14th Street between Constitution and E Streets, NW., Washington, D.C. 20230. In addition, for the convenience of the public, most of these materials may also be inspected at each of the EDA Regional Offices listed in § 301.31. The Office of Public Affairs, Washington, D.C., and the respective EDA Regional Offices are open to the public Monday through Friday of each week, except on official holidays, between the hours of 9 a.m. and 4:30 p.m. There are no fees or formal requirements for such inspections. Copies of these materials may be obtained at these facilities at cost (see fee schedule, § 301.56 of this subpart). In addition, copies of various EDA materials regularly available for sale by EDA may be purchased from the Office of Public Affairs, and EDA Regional Offices.

(d) Correspondence concerning materials available in the facility should be sent to the Office of Public Affairs at the above address.

§ 301.53 Federal Register public information.

In accordance with 5 U.S.C. 552(a)(1), the EDA public information facility described in § 301.52(c) also maintains a reference facility for the public inspection and copying of the following public information published in the FEDERAL REGISTER.

(a) Descriptions of EDA central and field organizations and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions.

(b) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(c) Rules of procedures, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports or examinations.

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency.

(e) Each amendment, revision, or repeal of the foregoing.

§ 301.54 Requests for identifiable records.

(a) A person who wishes to inspect a record which is not customarily available to the public as part of the regular informational activities of EDA shall, as described in § 301.53, submit a request in writing, giving a reasonable description of the record, to the Office of Public Affairs, EDA, Room 7019, U.S. Department of Commerce, 14th and Constitution, NW., Washington, D.C., 20230. A request may also be submitted to an EDA Regional Office listed in § 301.31 if the project or activity relating to the request is within the jurisdiction of that Regional Office. All other requests shall be submitted to the Office of Public Affairs in Washington, D.C.

(b) Employees at the above offices shall assist the public to a reasonable extent in framing requests. The responsibility, however, rests with the requester to describe each record sought in sufficient detail so that it can be located by personnel familiar with the filing of agency records. When more than one record is requested, requests shall clearly itemize each record requested so that it may be identified and its availability separately determined.

(c) Requests shall indicate the approximate costs requesters are willing to pay for the search and duplication of requested records.

(d) To further assist expeditious handling of requests, requesters should clearly and prominently mark their requests to distinguish their communications from other EDA mail. Accordingly, it is suggested that the underlined words "FOIA Request" be placed at the top of requests and on the outside of envelopes.

(e) Requests for agency records not customarily made available to the public received by an EDA Regional Office, and not relating to a project or activity within the jurisdiction of the Regional Office shall promptly be referred to the Office of Public Affairs, Washington, D.C.

(f) Requests are considered received
y EDA when they arrive at EDA's
ffice of Public Affairs, Washington,
.C. (see above address), or the Re-
ional Office having jurisdiction of
ne project or activity about which the
nquiry is being made. Requests filed
ith Regional Offices not having ju-
isdiction of the project or activity,
hall not be deemed as having been
iled until such request is received at
DA's Office of Public Affairs, Wash-
ngton, D.C. The receiving office shall
ate stamp the time of receipt of a re-
uest and shall enter its receipt in a
ublic log. The following information
hall be entered in the log: The date
nd time received; the nature of the
ecords requested; the action taken on
he request; the date of the determina-
ion letter sent under § 301.55; the
name and title of the person making
he determination; the date(s) records
are furnished; the number of staff
hours and grade levels of EDA em-
ployees who assisted in responding to
the request; and the fee requested and
received.

§ 301.55 Determinations of availability of records.

(a) When a request for information is received, the Office of Public Affairs or appropriate Regional Office (hereafter both offices are referred to as appropriate office) initially determines:

(1) Whether the requested record can be identified based on the information in the request. If the record cannot be identified, the appropriate office shall write the requester, within the time period specified in paragraph (b)(1) of this section infra, specifying why it is not identifiable and what additional clarification is needed to assist EDA in its identification. Upon the failure to identify the requested record, the processing of the request for the record in question shall be deemed to be denied. If the request is reviewed with additional information the time period specified in paragraph (b)(1) of this section shall start anew.

(2) Whether the record, if identifiable, is still in existence or has been destroyed as provided by law, or is not in the possession of EDA. If the record no longer exists, the requester shall be notified, and provided an explanation regarding why the record no longer exists. If the record is not in EDA's possession and its existence is not otherwise reasonably ascertainable, the requester shall be notified. If the requested record is in another organization of the Department of Commerce, or is the primary concern of another executive department or agency, the request for the record shall be promptly referred to the other organization or agency for further action under its rules. The deadline for processing requests in paragraph (b)(1) of this section does not start to run if the request is referred to another organization. The requester, however, shall be notified by the appropriate office that his request has been referred to another organization or otherwise cannot be filled within the period specified in paragraph (b)(1) of this section.

(b) If the requested record is identifiable and is in EDA's possession, the record shall be reviewed by one or more EDA officials to initially determine its availability. In making this review, the following procedures shall be followed by EDA:

(1) The official shall determine within 10 working days after receipt (as defined in § 301.54(f) of this subpart) of a request, whether to comply with the request, and by the end of these 10 days notification shall be dispatched to the requester of the determination. This deadline may be extended as provided in § 301.59.

(2) The record shall be made available unless it meets the criteria contained in the following exemptions in accordance with 5 U.S.C. 552(b)(1-9);

(i)(A) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(ii) Related solely to the internal personnel rules and practices of an agency;

(iii) Specifically exempt from disclosure by statute;

(iv) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(v) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(vi) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(vii) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

(viii) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(ix) Geological and geophysical information and data, including maps, concerning wells.

(3) If it is determined, after consultation with EDA's Office of the Chief Counsel, that, as provided by law, the record or a portion of a record is not to be made available to the requester, the notification shall be made by the Director, Office of Public Affairs, and be in writing and inform the requester of:

(i) The specific reasons for the denial including the statutory authority for the claimed exemption;

(ii) The names and titles or positions of each person responsible for the denial; and

(iii) The right of the requester to appeal the determination as provided in § 301.58 and the address to which an appeal is to be sent.

(4) When a requested record or a portion of a record is not made available to the requester, the official shall review the entire record to determine whether there are reasonably segregable portions of the record for which statutory exemptions from release do not apply. These portions of the record shall be made available to the requester after deleting portions for which a statutory exemption is claimed.

(5) If the record is to be made available, and there are no further fees, it shall be promptly furnished to the requesting person through the appropriate office specified in § 301.57. If there are fees to be recovered from the requester under § 301.56, the appropriate office shall determine the amount and notify the requester that when fees are paid, the record shall promptly be made available in the appropriate office or a copy mailed by it to the requester.

§ 301.56 Fees.

A uniform schedule of fees for the U.S. Department of Commerce has been promulgated to recover the direct costs of search and duplication of records in responding to freedom of information requests. This fee schedule and procedures for collecting fees are published in the U.S. Departmen of Commerce regulations (15 CFR 4.9 and apply to all requests for EDA records.

§ 301.57 Arrangement for public inspe tion and copying of agency recor subject to disclosure.

(a) Upon receipt of the recor search fee, and any fees for addition services requested, the record whic has been determined to be availab shall, unless the requester indicat otherwise, be transferred to ED Office of Public Affairs, or the appr priate Regional Office, where it will held for inspection by the reques for 5 working days. The address, a hours of operation of this office stated in § 301.42(c) of this subp and in § 301.31. If a requester does want to inspect a record by perso visit to an appropriate office, he m request that a copy be mailed to upon payment of the copying postage fees referred to in § 301.5 this subpart.

(b) During this inspection of the record at the appropriate office, the requester may copy by hand the record, and, subject to the payment of copying fees referred to in § 301.56 of this subpart, may obtain a xeroxed or similar copy thereof, and certification of a machine-copied record.

(c) No changes or alteration of any type may be added or deleted. Papers bound or otherwise assembled in a record file may not be disassembled during inspection. Staff of the appropriate office shall provide assistance if disassembly of a record is necessary for copying purposes, and are authorized to supervise public inspection as necessary to protect EDA records.

(d) No person may, without permission, remove records made available to him for inspection or copying under this subpart from the office where it is made available.

§ 301.58 Appeals for decisions of nonavailability.

(a) A person whose request to inspect a record has been denied under § 301.55(b)(3) may appeal the initial denial.

(b) Appeals must be made within 30 days of either the requester's receipt of the initial denial, or, in cases of partial denials, his receipt of the records made available under the initial determination. Appeals must be in writing. In submitting an appeal, the requester shall include written arguments he believes will support his appeal that the requested record should be made available. No personal appearance, oral argument, or hearing are permitted. Appeals shall be sent to EDA's Office of Public Affairs, and the envelope shall be prominently marked with the underlined words "FOIA Appeal". Appeals are considered received by EDA when they arrive at the Office of Public Affairs, EDA, Room 709, U.S. Department of Commerce, 14th Street between Constitution and E Streets, NW., Washington, D.C. 20230.

(c) The Assistant Secretary of Commerce for Economic Development shall make the decision whether to make available records initially denied and requested in an appeal. This decision shall be based on the original request, the denial, and any written argument submitted by the requester.

(d) The Assistant Secretary shall make a determination regarding an appeal within 20 working days after receipt of an appeal, and by the end of these 20 days dispatch notification to the requester of his determination. This deadline may be extended as provided in § 301.59. If the decision is wholly or partially in favor of the requester, the requested record to such extent shall be promptly made available for inspection or copying as described in § 301.56 and § 301.57, and the requester shall be so informed. If the denial of the request for records is in whole or part upheld, notification to the requester shall be in writing, and inform the requester of:

(1) The specific reasons for the decision;

(2) The names and titles or positions of each person responsible for the denial or an appeal; and

(3) The right to obtain judicial review of the determination under 5 U.S.C. 552(a)(4)(B).

(e) A decision regarding an appeal under this paragraph shall constitute the final decision and action by EDA concerning the availability of a requested record, except as may be required by court proceedings under 5 U.S.C. 552(a)(4)(B).

(f) Appeals resulting in final decisions shall be indexed and kept available for public reference in the Office of Public Affairs.

§ 301.59 Extensions of time for processing requests.

(a) The time limits for processing initial requests and appeals in §§ 301.55(b)(1) and 301.58(d) may be extended up to an additional 10 working days by written notice from the Office of Public Affairs to the requester. This notice shall state the reasons for the extension and the date a determination is expected to be dispatched.

(b) An extension of time for processing a request may occur if reasonably necessary for the proper processing of the request, and one of the following conditions is met:

(1) The need to search for and collect the requested records from field

facilities or other establishments that are separate from the office processing the requests;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation with another agency having a substantial interest in the determination of the request or among two or more components of the agency having subject-matter interest therein.

(c) Because of EDA's regional organization, and the involvement of Regional Offices as well as the Washington, D.C., office in program decisions and file maintenance, it is anticipated that EDA shall in most cases extend the period for processing requests based on (1) The need to collect records from field facilities, and (2) the need to consult with components of the agency.

(d) Extension of time may occur at both the initial and appeal stages or several times in either stage, however, the total period of extensions for a request may not exceed 10 working days.

§ 301.60 Record of application.

The Assistant Secretary shall maintain as a permanent part of the records of EDA a list of applications approved for financial assistance. This list is available for public inspection during regular business hours of the Department of Commerce. The following information shall be posted in the list as soon as an application is approved:

(a) The name of the applicant, and, in the case of corporate applications, the names of the officers and directors thereof;

(b) The amount and duration of the loan and grant for which application is made;

(c) The purpose for which the proceeds of the loan or grant are to be used; and

(d) A general description of the security offered in the case of a loan.

Subpart E—Information Collection R
quirements Under the Paperwo
Reduction Act: OMB Contr
Numbers

§ 301.70 OMB control numbers assign
pursuant to the Paperwork Reducti
Act.

(a) This table displays control nu
bers assigned to EDA's informati
collection requirements by the Offi
of Management and Budget ("OMB
pursuant to the Paperwork Reducti
Act of 1980, Pub. L. 96-511. EDA
tends that this table comply with t
requirements of Section 3507(f) of t
Paperwork Reduction Act, which
quires that agencies display a curre
control number assigned by the Dir
tor of OMB for each agency inform
tion collection requirement.

(b) Control Number Table:

13 CFR part or section where identified and described	Curr OM contro
Part 305	0610
	0610
Part 306	0610
	0610
Part 307	0610
Part 308	0610
	0610
Sec. 309.2(c)	0610
Sec. 309.22	0610
Part 311	0610
	0610
	0610
Sec. 312.5	061
Part 317	061

[50 FR 12236, Mar. 28, 1985]

PART 302—DESIGNATION OF AR

Subpart A—Standards for Designation
development Areas Under Section
of the Act

Sec.
302.1 Designation on the basis of
ployment.
302.2 Designation on the basis of
population.
302.3 Designation on the basis of
family income.
302.4 Designation on the basis of
lands.
302.5 Designation on the basis of
rise in unemployment.

Sec.
302.6 Designation on the basis of Area Redevelopment Act.
302.7 Designation of public works impact program areas.
302.8 Designation of special impact areas.
302.9 Recognition of redevelopment areas designated under the Community Economic Development Act of 1981.
302.10 Designation on the basis of per capita employment.
302.11 Designation on the basis of substantial unemployment and the national average rate of unemployment.
302.12 Designation on the basis of long-term economic deterioration.
302.13 Exception to criteria for qualification.

Subpart B—Limitations on Designation of Areas

302.20 Limitations with respect to the size and boundaries of redevelopment areas.
302.21 Receipt of an acceptable OEDP.

Subpart C—Annual Review, Modification, and Termination of Designated Areas

302.40 Adjustment of boundaries.
302.41 Review of area eligibility and termination of designation.

Subpart D—Notice

302.50 Notification of public officials.
302.51 Lists of redevelopment areas and centers designated under the Act.

Subpart E—Information

302.60 Information.

AUTHORITY: Sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); Sec. 1-105, DOC Organization Order 10-4, as amended (40 FR 56702 as amended).

SOURCE: 38 FR 2266, Jan. 23, 1973, unless otherwise noted.

Subpart A—Standards for Designation of Redevelopment Areas Under Section 401(a) of the Act

§ 302.1 Designation on the basis of unemployment.

On the basis of labor force data supplied by the Secretary of Labor, the Assistant Secretary shall designate those areas as redevelopment areas:

(a) Where the current rate of unemployment, as determined by appropriate annual statistics for the most recent twelve consecutive months, is 6 percent or more and had averaged at least 6 percent for the qualifying time periods specified in paragraph (b) of this section; and

(b) Where the annual average rate of unemployment has been at least—

(1) 50 percent above the national average for 3 of the preceding 4 calendar years, or

(2) 75 percent above the national average for 2 of the preceding 3 calendar years, or

(3) 100 percent above the national average for 1 of the preceding 2 calendar years.

[38 FR 2266, Jan. 23, 1973, as amended at 44 FR 40882, July 13, 1979; 51 FR 24514, July 7, 1986]

§ 302.2 Designation on the basis of loss of population.

The Assistant Secretary shall designate those areas as redevelopment areas where he determines there has been a substantial loss of population due to lack of employment opportunity.

§ 302.3 Designation on the basis of median family income.

(a) The Assistant Secretary shall designate those areas as redevelopment areas which he finds have a median family income not in excess of 50 percent of the national median family income.

(b) Determinations of median family income are to be based on the income statistics shown in the 1980 U.S. Census.

[38 FR 2266, Jan. 23, 1973, as amended at 51 FR 24514, July 7, 1986

§ 302.4 Designation on the basis of Indian lands.

(a) The Assistant Secretary shall designate those Indian reservations, Indian trust land areas, and restricted Indian-owned land areas, including Alaskan Native Villages, which manifest the greatest degree of economic distress as redevelopment areas.

(1) Indian reservations shall consist of land areas which by official Federal or State action or recognition have been reserved for the use and benefit of a specific Indian tribe or tribes, and shall include those lands to which the Federal or State Government retains

title and may include tribally-owned lands, lands allotted to individual tribal members, and interspersed land belonging to non-Indians.

(2) Indian trust land areas shall consist of land areas held in trust by or under the authority of Federal or State Government for use and occupancy by Indians.

(3) Restricted Indian-owned land areas shall consist of land areas owned by Indian tribes, but subject to restrictions on alienation or use imposed by Federal or State Governments.

(b)(1) The Assistant Secretary upon consultation with the Secretary of Interior or an appropriate State agency shall designate those areas under this section which he determines manifested the greatest degree of economic distress on the basis of unemployment and income statistics and other appropriate evidence of economic underdevelopment.

(i) The Assistant Secretary upon consultation with the Secretary of Interior or an appropriate State agency may designate under this section uninhabited Federal or State Indian reservations or trust or restricted Indian-owned land areas where such designation would permit assistance to Indian tribes, with a direct beneficial effect on the economic well-being of Indians.

(2) When the determination of economic distress required for designation under this subsection pertains to land areas which include lands which are not contiguous, it must be shown that there is a clear economic connection between the noncontiguous lands and that the inclusion of such lands in the redevelopment areas will contribute to a more effective program for economic development.

[38 FR 2260, Jan. 23, 1973, as amended at 38 FR 12903, May 17, 1973; 39 FR 12859, Apr. 9, 1974; 39 FR 44960, Dec. 30, 1974; 41 FR 7086, Feb. 17, 1976]

§ 302.5 Designation on the basis of sudden rise in unemployment.

The Assistant Secretary shall designate those areas where he determines that the loss, removal, curtailment, or closing of a major source of employment has caused within 3 years prior to, or threatens to cause within 3 years after the date of the request of the area, an unusual and abrupt rise in unemployment of such magnitude that the unemployment rate for the area exceeds or will exceed the national average by 50 percent or more unless assistance is provided.

(a) Requests from such areas for designation must be made by the local official governing body having jurisdiction over the proposed redevelopment area.

(b) Where the loss, removal, curtailment, or closing of the major source of employment has occurred:

(1) The major source of employment shall be construed as a single firm or industry.

(2) Job losses in more than a single firm or in more than in a single industry may be considered in the aggregate where:

(i) There is a clear demonstrable economic connection between or among the firms or industries, or

(ii) More than one firm or industry has been affected by a common disaster.

(3) A major source of employment is deemed such when its loss, removal, curtailment, or closing has caused or can reasonably be expected to cause:

(i) An increase of 500 or more in the number of unemployed persons in the area, or

(ii) An increase of 2 percentage points or more in the area's unemployment rate. The percentage-point increase in the unemployment rate for the area shall be based upon the relationship of actual or expected additional unemployed to the number of persons in the labor force of the area.

(c) Where the actual or threatened closing has caused or threatens to cause within 3 years after the date of the area's request an unusual and abrupt rise in unemployment:

(1) The rise in unemployment must be shown to be unusual or unique for the area, the industry, and the time of year.

(2) The rise in the rate of unemployment, to be considered abrupt or unusual, must have occurred or be reasonably expected to occur during a 1 year period within the qualifying span of 3 years before to 3 years after the date of the request for designation.

(d) In determining whether an area's unemployment rate can be reasonably expected to exceed the national average by 50 percent or more, consideration shall be given to those job-loss situations in which it is public knowledge that the jobs lost were or will be of a type in such great demand that the persons laid off were or will be readily reemployable.

(e) Areas designated under this section are allowed a reasonable time after designation to submit for approval an OEDP, Part 304 of this chapter. Notwithstanding, an area designated under this section which does not have an approved OEDP is not eligible for financial assistance under Titles I and II of the Act.

[38 FR 2266, Jan. 23, 1973, as amended at 51 FR 24514, July 7, 1986]

§ 302.6 Designation on the basis of the Area Redevelopment Act.

(a) The Assistant Secretary shall designate as redevelopment areas those areas which were designated redevelopment areas under the Area Redevelopment Act on or after March 1, 1965.

(b) After the first annual review of eligibility, the areas designated under this section shall be dependent on their qualifying for continued designation under the criteria set forth in §§ 302.1 through 302.5.

§ 302.7 Designation of public works impact program areas.

(a) The Assistant Secretary shall designate communities or neighborhoods defined without regard to political or other subdivisions or boundaries as a public works impact program area, when he/she determines one of the following conditions have been met by the defined area in its entirety.

(1) A large concentration of low income persons. This includes:

(i) An area presently selected for assistance by the Department of Health and Human Services under the Community Economic Development Act of 1981 (Title VI, Chapter 8, Subchapter A of Pub. L. 97-35)

(ii) An area in which the majority of the families are living in poverty, as defined by the U.S. Department of Health and Human Services guidelines, as published each year in the Federal Register.

(2) Rural areas having substantial outmigration. This includes an area which has experienced a minimum outmigration rate of at least 25 percent during the period from 1970 to 1980 as established by the Bureau of Census.

(3) Substantial unemployment as established by an annual average unemployment rate of 8.5 percent or more during the most recent quarter for which appropriate data is available.

(4) An actual or threatened abrupt rise of unemployment due to the closing or curtailment of a major source of employment. The area must meet the qualifications as set forth in § 302.5 except those in section (e). Although no boundary constraints, as set forth in § 302.20(a), shall apply, the area for which designation is sought must be one for which EDA can obtain data establishing its eligibility for designation.

(b) [Reserved]

(c) No public works impact program area designated under this section shall be eligible to be considered a redevelopment area for the purposes of district designation.

[38 FR 2266, Jan. 23, 1973, as amended at 42 FR 23796, May 11, 1977; 44 FR 40882, July 13, 1979; 50 FR 12237, Mar. 28, 1985; 51 FR 23403, July 3, 1986; 51 FR 24514, July 7, 1986; 53 FR 50206, Dec. 14, 1988]

§ 302.8 Designation of special impact areas.

The Assistant Secretary shall designate special impact areas where:

(a) One of the following criteria have been met:

(1) Large concentration of low-income persons. This includes:

(i) An area presently selected for assistance by the Department of Health and Human Services under the Community Economic Development Act of 1981 (Title VI, Chapter 8, Subchapter A of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35); or

(ii) An area in which a majority of the families are living in poverty as defined by the Department of Health and Human Services guidelines and published each year in the FEDERAL REGISTER.

(2) Rural Areas having substantial outmigration. This includes any area which has experienced a minimum outmigration rate of at least 25 percent during the period from 1970 to 1980 as established by the Bureau of the Census.

(3) An area of substantial unemployment, meaning one which (i) experienced an average unemployment rate at least 50 percent higher than the U.S. average unemployment rate for the most recent 12-month period for which data are available, or (ii) is currently experiencing an unemployment rate at least 100 percent higher than the U.S. average unemployment rate.

(4) An area which has or is threatened with an abrupt rise in unemployment due to the closing or curtailment of a major source of employment, and which has or can reasonably be expected to have an unemployment rate 100 percent or more above the national average. The policy guidelines for designation of areas under section 401(a)(4) of the act (Planning Directive No. 17.09 shall apply to designations under section 401(a)(6)(D) unless otherwise specified herein (e.g., unemployment rate 100 percent above the national average).

(b) Written requests have been submitted by State or local governments, agencies or instrumentalities thereof, or with the concurrence of the appropriate governmental authority of the political subdivision of which the area is a part, by any public or private nonprofit organization or association representing the area for which designation is sought. Requests should contain the following material:

(1) A description of the proposed boundary and facility characteristics of the proposed special impact area including a map showing the relation to the larger area to which it is a part. Such description should how conformity with area wide zoning ordinances and appropriate land use plans.

(2) A description of the socioeconomic characteristics of the proposed special impact area.

(3) An OEDP.

(4) Written evidence of support from members of the community at large.

(c) No special impact area designate under this section shall be eligible to be considered a redevelopment area for the purposes of district designation.

[38 FR 2266, Jan. 23, 1973, as amended at 51 FR 24514, July 7, 1986; 53 FR 50207, Dec. 14, 1988]

§ 302.9 Recognition of redevelopmen areas designated under the Community Economic Redevelopment Act of 1981.

Areas selected for assistance under Chapter 8, Subchapter A of the Omnibus Budget Reconciliation Act of 1981 (Community Economic Development Act of 1981, 42 U.S.C. 9801) will be deemed redevelopment areas within the meaning of section 401 of the Act. Such areas qualify for assistance under the provisions of titles I and II of the Act and shall be deemed to have met the overall economic development program requirements of section 202(b)(10) of the Act.

[47 FR 5997, Feb. 10, 1962. Redesignated a 51 FR 24514, July 7, 1986]

§ 302.10 Designation on the basis of pe capita employment.

The Assistant Secretary shall designate as redevelopment areas thos areas which have suffered a significant decline in per capita employment. Such areas shall be defined as thos having a decline in per capita employment of more than 1.2 percentag points between 1970 and 1980, an which also have net outmigratio during the same period, as determine by the 1980 census.

[51 FR 24514, July 7, 1986]

§ 302.11 Designation on the basis of su stantial unemployment and the natio al average rate of unemployment.

(a) The Assistant Secretary sha designate as a redevelopment area an area for which the Secretary of Labo has provided labor force data showin that:

(1) The area has experienced a su stantial average unemployment ra over a 24-month period; and

(2) The area has experienced an a erage 24-month unemployment ra for the most recent 24-month peri

for which data are available to EDA, which was above the national 24-month average unemployment rate for the same period.

(b) The Secretary of Labor shall provide the unemployment data for use by the Assistant Secretary in designating redevelopment areas pursuant to the criteria of section 401(a)(8) of the Act, as implemented by paragraphs (a)(1) and (a)(2) of this section.

(c) For the purpose of this section, "substantial unemployment" is defined as an unemployment rate of 6 percent or more.

[51 FR 24514, July 7, 1986]

§ 302.12 Designation on the basis of long-term economic deterioration.

The Assistant Secretary shall designate as redevelopment areas those areas which have demonstrated long-term economic deterioration.

[44 FR 40883, July 13, 1979. Redesignated at 47 FR 5997, Feb. 10, 1982, and at 51 FR 24514, July 7, 1986]

§ 302.13 Exception to criteria for qualification.

(a) The Assistant Secretary shall designate in a State which has no redevelopment area that area which most nearly qualifies under this subpart.

(b) Designation made under paragraph (a) of this section shall be terminated in accordance with section 402 of the Act if any other area within the same State subsequently becomes qualified or designated under any other section of this subpart.

(1) Designation under paragraph (a) of this section will not be terminated under paragraph (b) of this section if the area becoming qualified or designated becomes qualified under § 302.7, § 302.8, or § 302.9.

(2) Termination under this subsection will become effective at the time of the annual review under § 302.41.

[44 FR 40883, July 13, 1979. Redesignated at 47 FR 5997, Feb. 10, 1982, and at 51 FR 24514, July 7, 1986]

Subpart B—Limitations on Designation of Areas

§ 302.20 Limitations with respect to the size and boundaries of redevelopment areas.

(a) The size and boundaries of redevelopment areas will be determined by the Assistant Secretary subject to the following limitations.

(1) No area will be designated which does not have a population of at least 1,500 persons, except for areas designated in accordance with §§ 302.4 and 302.7-302.9.

(2) Except for areas designated in accordance with §§ 302.4, 302.5, and 302.7-302.9, no area will be designated which is smaller than a "labor area" (as defined by the Secretary of Labor), a county, or a municipality with a population of over 25,000 persons, whichever the Assistant Secretary deems appropriate.

(3) All parts of the area seeking designation under § 302.5 must be contiguous.

(4) Delineation of the area designated under § 302.5 must be based on a reasonable grouping of census tracts or similar geographical units, or the area must be defined by specific boundaries incorporating commercial or industrial sites and enterprises which can offer employment opportunities for the work force of the area.

(b) Nothing in this section shall prevent any municipality designated or eligible to be designated as a redevelopment area from combining with any other community having mutual economic interests and transportation and marketing patterns for the purpose of such designation.

(c) Areas qualified in accordance with § 302.5 may be designated subject to the receipt of an acceptable OEDP within 6 months following such conditional designation, or within such additional period as the Assistant Secretary may grant for good cause.

(d) Any area, other than those areas eligible for designation pursuant to §§ 302.5 and 302.7, which does not submit an acceptable OEDP within 6 months after notification of its qualification for designation, shall not thereafter be designated prior to the next annual review of eligibility; however, such period may be extended for good cause.

[38 FR 2266, Jan. 23, 1973, as amended at 44 FR 40883, July 13, 1979]

§ 302.21 Receipt of an acceptable OEDP.

(a) No area shall be designated until it has an approved overall economic development program (OEDP), as described in 13 CFR Part 304, except those areas eligible for designation under §§ 302.5 and 302.7.

(b) Areas qualified in accordance with § 302.5 may be designated subject to the receipt of an acceptable OEDP within 6 months following such conditional designation, or within such additional period as the Assistant Secretary may grant for good cause.

(c) Any area, other than those areas eligible for designation pursuant to §§ 302.5 and 302.7, which does not submit an acceptable OEDP within 6 months after notification of its qualification for designation, shall not thereafter be designated prior to the next annual review of eligibility; however, such period may be extended for up to 6 months if EDA determines there is good cause.

[44 FR 40883, July 13, 1979]

Subpart C—Annual Review, Modification, and Termination of Designated Areas

§ 302.40 Adjustment of boundaries.

(a) The Assistant Secretary may make minor modifications in the boundaries of redevelopment areas designated under Subpart A of this part.

(1) Such modification will contribute to a more effective program for economic development within such area.

(2) There is a request in writing which—

(i) Outlines the exact extent of the boundary adjustment.

(ii) States how the absence of the boundary adjustment would impede the implementation of the approved OEDP.

(iii) States why a specifically proposed project cannot be located within the existing boundaries of the designated redevelopment area.

(3) The interested State official or agency is informed and given opportunity to submit comments on the request or endorse the request.

(b) No additional area will be included within the boundary line within the redevelopment area than is necessary to accomplish the project for which the boundary adjustment is being sought.

[38 FR 2266, Jan. 23, 1973, as amended at 39 FR 44960, Dec. 30, 1974; 44 FR 40883, July 13, 1979]

§ 302.41 Review of area eligibility and termination of designation.

(a) *Newly qualified areas.* Based on the appropriate annual and monthly statistics, the Assistant Secretary shall determine whether any new areas are eligible for designation as such statistics become available.

(b) *Annual review of previously qualified areas and of previously designated areas.* The Assistant Secretary shall conduct an annual review of area eligibility for areas currently designated and for areas previously qualified but not designated. The Assistant Secretary shall conduct this review during the calendar quarter in which the anniversary of the area's designation occurs or in which the anniversary of the notification to an area of its qualification for designation occurs. Thi review will be made to determine:

(1) Whether qualified areas continu to meet qualification criteria, or

(2) Whether the designation statu of an area shall be terminated modified in accordance with pr scribed standards.

(c) Notice of termination of an area designation shall be given to loc State, and national officials not le than 30 days before its effective da

(d) The termination of an area's d ignation status will not:

(1) Affect the validity of any app cation filed or contract or undertaki entered into, with respect to such a prior to such termination, so long the applicant pursues such applicat diligently and submits promptly the after such information as the Ass ant Secretary may from time to t request.

(2) Prevent any area from being designated in the future if it again satisfies the criteria for designation.

(3) Be made in the case of any designated area where the Assistant Secretary determines that an improvement in the unemployment rate of the area is the result of temporarily increased employment in particular occupations.

(4) Be made when it would result in a State having no designated redevelopment area.

[38 FR 2266, Jan. 23, 1973, as amended at 44 FR 40883, July 13, 1979; 45 FR 67063, Oct. 9, 1980; 46 FR 9026, Jan. 28, 1981; 51 FR 24515, July 7, 1986]

Subpart D—Notice

§ 302.50 Notification of public officials.

(a) The Assistant Secretary shall notify local, State, and national officials of:

(1) An area qualifying under criteria set forth in Subpart A of this part.

(2) An area's designation when all the requirements have been met.

(3) Termination or modification of qualifying or designation status.

(b) Those officials to be notified are:

(1) The two Senators from the State and the Congressman within whose district the area is located.

(2) The elected local official(s) of the area.

(3) The chairman of the OEDP committee.

(4) The State agency designated by the Governor to handle EDA activities.

(5) The appropriate Economic Development Administration Regional Office.

(c) Notice of termination or of modification (other than minor boundary adjustments) of area qualification or designation status, will be given at the conclusion of the annual review of area eligibility. Notice of minor boundary adjustment will be made whenever such actions occur.

(d) Notice of qualification will be given whenever statistics are received by EDA warranting such qualification.

(e) Notice of designation is made immediately following the official designation action, whenever such action is taken.

[38 FR 2266, Jan. 23, 1973, as amended at 39 FR 44960, Dec. 30, 1974; 44 FR 40883, July 13, 1979; 50 FR 27420, July 3, 1985; 51 FR 1782, Jan. 15, 1986]

§ 302.51 Lists of redevelopment areas and centers designated under the Act.

The Economic Development Administration will maintain current lists of areas and centers designated under the Act. The lists shall be kept available for public inspection during the regular business hours of the Department of Commerce. Inquiries for such lists shall be made to the Director, Office of Management and Administration, Economic Development Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Room 7816, Washington, D.C. 20230.

[48 FR 5711, Jan. 8, 1983]

Subpart E—Information

§ 302.60 Information.

Upon the request of the Assistant Secretary the heads of such governmental agencies as may be appropriate are authorized to conduct such special studies, obtain such information, and compile and furnish to the Assistant Secretary such data as the Assistant Secretary may deem necessary or proper to enable him to make the determinations provided for in this part. The Assistant Secretary shall reimburse when appropriate, out of any funds appropriated to carry out the purposes of the Act, the foregoing officers for any expenditures incurred by them under this section.

(Sec. 701, Pub. L. 89-136, 79 Stat. 570, as amended (42 U.S.C. 3211); Pub. L. 94-487, 90 Stat. 2331; Dept. of Commerce Organization Order 10-4 (Sept. 30, 1975), as amended (40 FR 56702 as amended at 40 FR 58878 and 41 FR 35548))

PART 303—ECONOMIC DEVELOPMENT DISTRICTS

Subpart A—Standards for Designation, Modification and Termination of Economic Development Districts

Sec.

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Subpart B—Standards for Designation, Modification, and Termination of Economic Development Centers

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303.25 Assistance to economic development districts.

AUTHORITY: Sec. 701, Pub. L. 89-136 (August 26, 1965); 42 U.S.C. 3211; 79 Stat. 570 and Dept. of Commerce Organization Order 10-4 (Apr. 1, 1970).

SOURCE: 38 FR 2269, Jan. 23, 1973, unless otherwise noted.

Subpart A—Standards for Designation, Modification and Termination of Economic Development Districts

§ 303.1 Authorization of economic development districts.

(a) The Assistant Secretary may authorize, at the request of the Governor(s) of the State or States, the delineation of economic development district (hereinafter district) boundaries as a prerequisite to designation of an economic development district and as a prerequisite to the provision of planning grants, Subpart B of Part 307 of this chapter.

(b) Authorization of delineation may be made:

(1) Where the State or States after analyzing economic and social relationships among the various redevelopment area counties proposed to EDA a district boundary delineation.

(2) Where the district proposed for authorization meets the general standards for designation set forth in § 303.2.

(3) Where a consideration of the following factors has been made:

(i) The percentage of the populatio
living in redevelopment areas.

(ii) District per capita income.

(iii) The percentage of families wi
annual income below the pover
threshold.

(iv) Unemployment rates and lab
force participation rates of the p
posed district.

(v) Economic characteristics of e
nomic growth centers.

(vi) The proposed district's readin
to hire a professional staff and be
work.

(4) Where the district proposed
authorization of delineation of bo
aries conforms to an officially d
eated sub-State district, if such ex
or where the Governor has prov
the Assistant Secretary with an e
nation and support from any vari
of the officially delineated sub-
district.

[38 FR 2269, Jan. 23, 1973, as amende
FR 44960, Dec. 30, 1974]

§ 303.2 Designation of economic development districts.

The Assistant Secretary is authorized to designate economic development districts with the concurrence of the States in which the districts will be wholly or partially located.

(a) Where the proposed district is of sufficient size or population, and contains sufficient resources, to foster economic development on a scale involving more than a single redevelopment area.

(b) Where the proposed district contains at least one redevelopment area.

(c) Where the proposed district contains one or more redevelopment areas or economic development centers identified in an approved district overall economic development program (hereinafter OEDP) as having sufficient size and potential to foster the economic growth activities necessary to alleviate the distress of the redevelopment areas within the district.

(d) Where the proposed district has a district OEDP which identifies one or more proposed economic growth centers, includes adequate land use and transportation planning, contains a specific program for district cooperation, self-help, and public investment and is approved by the State or States affected and by the Secretary.

(e) Where at least three-fourths of the counties within the proposed district boundaries have submitted documentation of their commitment to support the economic development activities of the district.

(f) Where a district organization has been established which meets the requirements of § 303.4–1.

(g) Where the proposed district organization requests such designation.

[38 FR 2269, Jan. 23, 1973, as amended at 39 FR 44960, Dec. 30, 1974; 45 FR 55701, Aug. 21, 1980]

§ 303.3 Designation of nonfunded districts.

Designation is not limited to districts receiving EDA planning grants. However, any nonfunded district receiving authorization and designation is subject to the same criteria and organization requirements applicable to funded districts.

§ 303.4–1 District organizations.

(a) *Organization prerequisite to designation and funding.* The district organization is a prerequisite to initial and continued designation of an economic development district ("EDD"). In addition, it is prerequisite to the provision of planning grants.

(b) *Legal status.* Districts shall organize in one of the following ways:

(1) As nonprofit organizations incorporated under the laws of the States in which they are located;

(2) As public organizations through intergovernmental agreements for the joint exercise of local government powers; or

(3) As public organizations established under State enabling legislation for the creation of multijurisdictional areawide planning organizations.

(c) *Basic organizational requirements.* Each district organization must meet EDA requirements concerning its membership composition as set forth in § 303.4–1(d), its authorities and responsibilities for carrying out economic development functions as set forth in § 303.4–3, and the maintenance of adequate staff support to perform its economic development functions as set forth in § 303.4–1(e) in one of the two ways cited below:

(1) In general, the foregoing requirements must be met by the board of directors (or other governing body of the organization) as a whole.

(2) However, a waiver may be granted under provisions of § 303.4–2 to permit a district organization to use one of a variety of organizational options (hereafter, the "EDA component") set forth in § 303.4–2(c) to meet the basic organizational requirements.

(d) *Representation requirements.* The district organization shall demonstrate that either the district organization as a whole or its EDA component meets all of the following requirements:

(1) It is broadly representative of the following interests:

(i) The principal economic interests of the district, including business, industry, finance, transportation, utilities, the professions, labor, agriculture, and education. In meeting this requirement, the representatives of the principal economic interests may be private citizens, part-time elected officials, or minority representatives also selected under paragraph (d)(1)(ii) of this section.

(ii) Minority groups. Minority representatives shall be selected in accordance with *Civil Rights Guidelines* issued pursuant to 13 CFR Part 311, and may be private citizens, elected officials, or government employees.

(iii) Representatives of the unemployed and underemployed.

(2) There is at least a simple majority of its membership who are elected officials of, or employees of, a general purpose unit of local government and who have been appointed to represent such government.

(i) Where appointment of local government members is not otherwise provided for by the district organization charter or by-laws, each county and major city which joins the district shall name an elected official or an employee to represent it.

(ii) Where appropriate to their nongovernmental occupations, part-time elected officials may also represent the principal economic interests.

(3) There is at least one-fifth of its membership who are private citizens who are neither elected officials of a general purpose unit of local government nor employees of such a government who have been appointed to represent that government. All districts which have been authorized or designated before June 6, 1979, must comply with this provision no later than August 21, 1981.

(i) The district organization shall demonstrate that persons fulfilling this requirement represent the interests of groups listed in paragraph (d)(1) (i) or (iii) of this section. Minority representatives who meet these criteria may be counted toward the fulfillment of the private citizen requirement.

(ii) Except where these private citizens are also selected as minority representatives under paragraph (d)(1)(ii) of this section, these representatives shall be appointed by the governing bodies of the counties actively participating in the district organization or as otherwise provided in the district organizational charter and by-laws.

(e) *Staff support.* (1) The district organization or its EDA component established according to § 303.4-2 shall be assisted by a professional staff drawn from qualified persons in planning, economics, business administration, engineering and related disciplines.

(2) EDA may provide planning grants to economic development districts to employ professional staff in accordance with Subpart B of Part 307 of this chapter.

(f) *Public participation.* District organizations shall provide access for persons who are not members of the district organization or its "EDA component" to make their views known concerning ongoing and proposed district activities in accord with the following requirements:

(1) At a minimum, the district organization shall conduct meetings open to the public once a year. It shall also publish the date and the agenda of the meeting at least four weeks in advance to allow members of the public a reasonable time to prepare to participate effectively in the meetings.

(2) The district organization shall adopt a system of parliamentary procedures to assure that board members and other interested persons and groups have access to and an effective opportunity to participate in the affairs of the district.

(3) Where an "EDA component" is used, the district organization is required to hold appropriate public meetings and hearings when it considers significant economic development matters involving authorities, responsibilities, activities, or products of the EDA component.

(4) Information should be provided sufficiently in advance of public decisions to give citizens an adequate opportunity to review and react to proposals. District organizations should seek to relate technical data and other professional material to the affected citizens so that they may understand the impact of public programs, available options and alternative decisions.

(Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended))

[45 FR 55701, Aug. 21, 1980, as amended at 46 FR 9026, Jan. 28, 1981]

§ 303.4-2 Waiver of district organization basic representation requirements and organizational options thereunder.

(a) *Conditions for waivers to basic representational requirements.* Under the following circumstances only, EDA will grant waivers to § 303.4-1(c)(1) to permit district organizations to use an "EDA component" to meet EDA basic organizational requirements: (1) Where the subject organization is not the governing body of a designated economic development district or is not receiving a planning assistance grant under 13 CFR Part 307, Subpart B, and

(i) Where the proposed district organization is not able to meet some part of the representational requirements of § 303.4-1(d) because of mandatory requirements of an interstate compact, a State law or constitutional provision, a State governor's executive order issued pursuant to a constitutional provision or State law or a home rule charter of a participating city or county, or

(ii) Where the proposed district organization demonstrates that it would undergo special hardship if it is required to reorganize in order to comply with the requirements of § 303.4-1(c)(1); or

(2) Where the proposed district organization is an existing designated or funded economic development district which demonstrates to the satisfaction of the Assistant Secretary: (i) That it would undergo a special hardship if it is required to maintain its district status through continued compliance with § 303.4-1(c)(1), and

(ii) That it has obtained concurrence in its proposal to reconstitute the district organization under § 303.4-1(c)(2) from the principal economic interests, minority interests, and local governments involved in the district.

(b) *Consideration of requests for waivers.* EDA will consider the following points (without excluding other possibilities) in determining whether to grant a waiver under the foregoing section.

(1) Where the waiver request is based on a legal constraint under § 303.4-2(a)(1)(i), the following kinds of situations would be the basis for a waiver: (i) Where the membership composition or the membership appointment procedures of the organization are legally specified such that it cannot meet EDA board membership requirements, or

(ii) Where only local government elected officials are legally allowed to participate in the joint exercise of local government powers.

(2) Where the waiver request is based on the demonstration of special hardship under § 303.4-2(a)(1)(ii) or § 303.4-2(a)(2), the following factors would be considered: (i) The record of the organization in delivering projects related to economic development to assist distressed populations of the area,

(ii) The mechanisms proposed to provide for the involvement of the private sector and of distressed populations, including minority groups and local jurisdictions with high rates of distress, in the economic development planning process,

(iii) The age and complexity of any interlocal agreement for the joint exercise of powers,

(iv) The array of public policy issues assigned to the organization and the appropriateness for the various categories of representation required by EDA to participate in voting on the issues, and

(v) The risk of any breach of contract obligations if the organization were required to restructure its governing board in order to comply with EDA regulations.

(c) *Organizational options available under waiver provisions.* Organizations which are granted a waiver of § 303.4-1(c)(1) may employ one of the following types of organizational structure as their "EDA component" in accordance with § 303.4-1(c)(2), to meet EDA's basic organizational requirements:

(1) An augmented governing board whose membership meets EDA requirements;

(2) A subcommittee of the governing board where the subcommittee membership meets EDA's requirements;

(3) A policy advisory committee to the governing board where the com-

mittee membership meets EDA requirements;

(4) A bicameral decisionmaking organization in which dual policy bodies are created (consistent with § 309.17(b)), one of which meets EDA's requirements; and

(5) Other types of arrangements which are found by the Assistant Secretary to meet EDA's requirements.

[45 FR 55702, Aug. 21, 1980]

§ 303.4–3 District organization functions and responsibilities.

(a) *Basic requirement.* Economic development districts (EDDs) must arrange to carry out two classes of functions and responsibilities: Those which every EDD must carry out (paragraph (b) of this section), and those which EDDs receiving grants must carry out (paragraph (c)). Where the district organization uses an EDA component to meet EDA requirements, as provided for in § 303.4–2, the EDA component of the district organization shall be given authority to carry out certain parts of these two classes of functions and responsibilities described in paragraph (d) of this section.

(b) *Functions and responsibilities common to all EDDs.* Subject to the requirements of § 303.4–1, EDDs are responsible for seeing that the following functions are provided for on a continuing basis.

(1) *Organizational actions,* including: (i) Arranging the legal form of organization which will be used;

(ii) Arranging for the membership of the board of directors to meet § 303.4–1 requirements;

(iii) Recruiting staff to carry out the economic development functions;

(iv) Establishing a management system;

(v) Contracting for services to carry out district functions; and

(vi) Establishing and directing activities of economic development subcommittees.

(2) *Civil rights responsibilities* of 13 CFR Part 311 including: (i) Arranging for the EDD board of directors and its executive committee to comply with EDA requirements for minority representation;

(ii) Submitting reports to EDA on the EDD's compliance with civil rights requirements (e.g., nondiscrimination on the basis of race, color, national origin, sex, or handicap); and

(iii) Preparing, taking action on and reporting on an affirmative action plan for the district.

(3) *Actions to develop and maintain the required district overall economic development program (OEDP), and any subsequent supplements or revisions,* including: (i) Preparing the analytic, strategic and implementation components of the OEDP;

(ii) Identifying economic development centers and redevelopment centers and any later boundary modifications;

(iii) Adopting the OEDP by formal action of the EDD governing board;

(iv) Submitting the OEDP and any supplements or revisions for reviews by appropriate governmental bodies and interested organized groups, and attaching dissenting opinions and comments received; and

(v) Obtaining EDA approval of the OEDP.

(4) *Preparation of proposals that EDA take actions* which: (i) Establish or change the designation status of the district or its growth centers; or

(ii) Affect economic development projects available to the EDD.

(5) *Coordination and implementation* of economic development activities in the district, including: (i) [Reserved]

(ii) Assisting other eligible units within the district to apply for grant assistance for economic development purposes;

(iii) Carrying out economic development related research, planning, implementation and advisory functions as are necessary and helpful to the coordination with other local, State, Federal, and private organizations, and as are necessary and helpful to the development and implementation of the overall economic development program;

(iv) Coordinating the development and implementation of the OEDP with other local, State, Federal and private organizations (including minority organizations); and

(v) Carrying out the annual OEDP plan for implementation.

(c) *Grants management activities.* Economic development district organizations which seek and receive EDA grant assistance must carry out grants management activities, including:

(1) Preparing application materials and accepting EDA grant offers;

(2) Arranging for the contribution of the required non-Federal matching share of the grant project costs;

(3) Receiving and managing the proceeds of the grant from EDA and of the matching share contributions;

(4) Complying with grant terms and conditions, including those pertaining to financial management and to work program requirements;

(5) Incurring expenses in carrying out the purposes of the EDA grant and charging these projects costs against grant project accounts; and

(6) Keeping records, and preparing and submitting reports on the grant project.

(d) *EDA component functions and responsibilities.* Where the EDD uses an EDA component to meet EDA requirements under § 303.4-1, the following functions and responsibilities (with the exception of paragraph (d)(4)(iii), which need not be exclusive to the EDA component) shall be lodged solely in the EDA component:

(1) *Organizational actions.* The EDA component shall: (i) Adopt bylaws for the conduct of the functions and responsibilities assigned to the EDA component;

(ii) Establish and direct activities of economic development subcommittees;

(iii) Advise the district board of directors or the staff director, as appropriate, concerning the activities of the economic development staff which is established according to § 303.4-1(e)(1).

(2) *Civil Rights responsibilities.* The EDA component shall: (i) Assure that the required minority representatives participate in the functions and responsibilities of the EDA component; and

(ii) Work to resolve matters of civil rights compliance review and assist in implementing the district organization's ongoing affirmative action plan required under § 311.4(b) of 13 CFR.

(3) *Overall economic development program (OEDP) activities.* The EDA component shall have responsibility for: (i) Preparing and recommending adoption of the district OEDP, and of any subsequent supplements of revisions required by EDA, including the recommendation therein of project implementation priorities;

(ii) Making comments to the district organization board of directors concerning any board-initiated revisions of such OEDP documents;

(iii) Informing EDA when such revisions by the district organization board of directors constitute major departures from the recommendations of the EDA component and efforts to reinstate the substance of the recommended OEDP documents have not been successful;

(iv) Submitting the OEDP and any supplements or revisions for review by appropriate governmental bodies and significant organized interest groups, and the attaching thereto of dissenting opinions and comments received; and

(v) Determining when, on the initiative of the district, to revise and resubmit the OEDP.

(4) *Coordination and implementation activities.* The EDA components unit shall: (i) [Reserved]

(ii) Take actions required by EDA concerning grant or loan applications from other eligible applicants within the district which affect the district; and

(iii) Carry out economic development related research, planning, implementation and advisory functions as are necessary and helpful to the coordination with other local, State, Federal, and private organizations and to the development and implementation of the overall economic development program.

(5) *Application for and use of EDA grants.* The EDA component shall: (i) Advise the district organization board of directors concerning the scope of work section of grant applications; and

(ii) Comply with EDA terms and conditions relating to work program requirements.

[45 FR 55702, Aug. 21, 1980, as amended at 48 FR 29136, Jan. 24, 1983]

§ 303.5 Coordination with State and local organizations.

The Assistant Secretary will cooperate with State and local organizations in activities leading to designation of economic development districts including participation in the district program, formulation of the OEDP, and identification and analyses of potential economic growth centers.

§ 303.6 Modification of district boundaries.

The Assistant Secretary, with concurrence of the State or States affected, may modify the boundaries of a district consistent with standards for authorizing new districts set forth in § 303.1 if the Assistant Secretary determines that such modification will contribute to a more effective program for economic development.

§ 303.7 Termination and suspension of district designation.

(a) The Assistant Secretary will, upon 30 days' prior notice, terminate or suspend the designated status of an economic development district:

(1) Where the district no longer meets the standards for designation: (i) As set forth in § 303.2 (a), (b), (c), (d), (f), or (g), or

(ii) As set forth in § 303.2(e), except that district designation status may be continued if those counties which would maintain their commitment to support economic development activities are determined by EDA to meet the other standards of § 303.2 and the standards of § 303.1.

(2) Where a district has not maintained a currently approved district OEDP in accordance with Part 304 of this chapter.

(3) Where a district has requested termination with the approval of the State or States affected.

(4) Where a funded district fails to comply with terms and conditions of an EDA planning grant agreement.

(b) Terminations and suspensions resulting from failure to comply with Title VI of the Civil Rights Act of 1964 will be processed in accordance with the provisions of that Act.

[38 FR 2269, Jan. 23, 1973, as amended at 45 FR 55703, Aug. 21, 1980]

§ 303.8 Benefits.

(a) Designation of an economic development district is a prerequisite to EDA providing financial assistance to economic development centers.

(b) Projects in redevelopment areas which are located within designated economic development districts and which actively participate in the economic development district's OEDP planning process are eligible for 10-percent bonus grants, §§ 303.23 and 305.6 of this chapter if the project is consistent with a currently approved district OEDP.

Subpart B—Standards for Designation, Modification, and Termination of Economic Developmen Centers

§ 303.10 General standards for designatio of economic development centers.

The Assistant Secretary may designate an economic development center if such proposed center:

(a) Has been identified and included in an approved district OEDP.

(b) Is recommended by the State o States affected. Written concurrence from the State must be received b EDA.

(c) Is geographically and economically so related to the economic development district that the economic development center's economic growth ma be expected to contribute significantl to the alleviation of distress in the redevelopment areas of the district.

(d) Does not have a population i excess of 250,000 according to the las preceding Federal census.

(e) May reasonably be expected t accelerate or maintain existing rat of growth in terms of population, employment, and income.

(f) Has the prospect of developing diversified economy providing a wid range of health, educational, recr ational, and cultural facilities; a rel tively large local market; a relative large well-trained labor force; a other similar qualities which encou age the continuing growth of econo ic activities.

(g) Is an active participant in t district economic development p gram.

[38 FR 2269, Jan. 23, 1973, as amended at 40 FR 6640, Feb. 13, 1975]

§ 303.11 Number of economic development centers per district.

The Assistant Secretary will designate the single leading growth point in an economic development district as the economic development center. However, additional centers may be designated where unusual conditions exist in the district.

(a) Where the district contains a relatively large number of redevelopment area residents who do not have reasonable community access to any one economic development center.

(b) Where the district contains several smaller growth points rather than one leading economic development center.

§ 303.12 Boundaries of economic development centers and boundary modifications.

(a) An economic development center is administratively defined as a city or grouping of contiguous incorporated places. However, where justified, boundaries may be extended to include adjoining minor civil divisions or corridors of growth between centers.

(b) The Assistant Secretary may modify either the boundaries of an economic development center or the number of economic development centers in a district after giving notice and opportunity for comment to the State or States affected, if such modification will contribute to a more effective program.

§ 303.13 Termination and supension of economic development centers.

The Assistant Secretary may, upon 30 days prior notice to the interested State and local agencies, terminate the designated status of an economic development center when—

(a) The economic development center is no longer identified or recommended for designation in an approved district OEDP.

(b) The economic development center no longer meets the standards for designation, § 303.10.

(c) The economic development center fails to actively pursue its role as an economic development center in a manner that makes a significant impact on the performance of the economic development district within which it is located.

§ 303.14 Redevelopment centers.

The Assistant Secretary may recognize a redevelopment center which meets the criteria for economic development centers, but which falls in designated redevelopment area. There is no limit on the size of the population of a redevelopment center.

Subpart C—Financial and Other Assistance to Economic Development Centers and Districts

§ 303.20 Financial assistance to economic development centers.

The Assistant Secretary may provide financial assistance (including public works and development facility loans and grants and commercial and industrial loans and working capital guarantees) in accordance with the criteria contained in Parts 305 and 306 of this chapter for projects in economic development centers when—

(a) The project will further enhance the objectives of the overall economic development program of the district in which the economic development center is located.

(b) The project will enhance the relationship between the economic development center and the economic development district, particularly the redevelopment areas.

(c) The project will achieve one or more of the following:

(1) Encourage economic growth.

(2) Discourage out-migration from the district.

(3) Have a beneficial impact on the district's redevelopment areas.

§ 303.21 Economic development center project characteristics.

Projects in economic development centers shall have one or more of the following characteristics:

(a) High job producing capability.

(b) Remove barriers of access to jobs for the target population.

(c) Ability to trigger further project activity.

(d) Ability to trigger further economic impact.

(e) Provision of facilities and services deemed essential to stimulate further growth, at a level above that normally required for simple maintenance of a substantial community.

[38 FR 2269, Jan. 23, 1973, as amended at 39 FR 44960, Dec. 30, 1974]

§ 303.22 Grant rate for economic development center projects.

The grant rate for projects in economic development centers shall not exceed 50 percent of the project costs.

§ 303.23 Supplementary grants to district redevelopment areas.

Subject to the limitation that the maximum Federal share for any project may not exceed 80 percent of the aggregate cost (except as provided in §§ 305.5 and 305.6 of this chapter), the Assistant Secretary may increase the amount of grant assistance for public works and development facilities projects within redevelopment areas by an amount not to exceed 10 percent of the aggregate cost of any such project, if:

(a) The redevelopment area is situated within a designated economic development district and is actively participating in the economic development activities of the district and

(b) The project is consistent with the currently approved district OEDP.

§ 303.24 Financial assistance to redevelopment centers.

The eligibility of redevelopment centers for EDA financial assistance, including the 10 percent bonus as provided for in §§ 303.23 and 305.6 of this chapter, is the same as for any designated redevelopment area within the district. The grant rate for the redevelopment center shall be determined by the rate applicable to the redevelopment area within which it is located.

§ 303.25 Assistance to economic development districts.

Pursuant to Title III of the Act, the Assistant Secretary may provide other assistance to the district including:

(a) Technical assistance.

(b) Planning grants, Subpart B
Part 307 of this chapter, to assist t
district organization in engaging a p
fessional staff and carrying its pl
ning activities.

(c) Research assistance.

PART 304—OVERALL ECONOMI
DEVELOPMENT PROGRAM

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trict OEPDs.
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AUTHORITY: Section 701, Pub. L. 89-13
Stat. 570 (42 U.S.C. 3211). Sec. 1-105, I
Organization Order 10-4, as amended
FR 56702, as amended).

SOURCE: 38 FR 2271, Jan. 23, 1973, u
otherwise noted.

§ 304.1 OEDP requirement.

(a) Approval of an overall econ
development program, hereinafte
ferred to as OEDP, is a prerequ
for designation of a redevelop
area or economic development dis
except those areas designated u
§§ 302.5 and 302.7 of this chapter.

(b) A redevelopment area or eco
ic development district, where a
priate, is required to maintain a
rently approved OEDP to retai
previous designation for eligibili
receive EDA funds.

[38 FR 2271, Jan. 23, 1973, as amended
FR 7779, Feb. 28, 1974; 39 FR 44960, D
1974]

§ 304.2 Redevelopment areas may u
trict OEDP's.

Those qualified areas within ex
economic development districts
use the district's accepted OE
lieu of drawing up a separate
OEDP:

(a) Where the area has activel
ticipated in and supported the d
OEDP planning process, and

(b) Where the area has submi
letter to EDA signed by the

chief elected official or governing body and, where appropriate, a letter from the local OEDP committee wherein the area's decision to use the district OEDP is stated.

§ 304.3 Redevelopment Area OEDP Committee.

(a) The preparation of the Area OEDP and of the ongoing development program which it charts is the primary responsibility of the Area OEDP committee.

(1) Area OEDP Committees are required only in those areas not located in districts. (District organization requirements are set forth at § 303.4-1, § 303.4-2 and § 303.4-3 of this chapter.)

(2) However, because of the crucial role of the OEDP committee, EDA recommends that all areas establish such an organization even though located within a district and using the district OEDP (as allowed under § 304.2).

(b) The Area OEDP committee shall be representative of the community so that all viewpoints are considered in discussion and decisionmaking and all available local skills are engaged in program formulation. Representation on the committee shall include representatives of local government (county, city, and town), business, industry, finance, agriculture, the professions, organized labor, utilities, education, minorities, and the unemployed or underemployed. 13 CFR Part 311 of this chapter, as implemented by the *Civil Rights Guidelines*, contains the requirements for the specific representation of minority groups.

(c) If an existing development group meets the criteria as set forth in paragraph (b) of this section, that group may function as the Area OEDP committee.

(Sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); Dept. of Commerce Organization Order 10-4 (Sept. 30, 1975), as amended (40 FR 56702, as amended))

[45 FR 55703, Aug. 21, 1980]

§ 304.4 Initial OEDP.

(a) The initial OEDP is the beginning of a planning process required by qualified redevelopment areas and economic development districts before the designation process can be completed.

(b) The initial OEDP will provide a concise and accurate background of the area or district in order to assist the local leaders and EDA to understand the current development situation. Such background may include a discussion of the district or area's geography, population, labor force, natural and manmade resources, economic and social activities.

(c) The initial OEDP will examine economic development and community improvement opportunities and problems. This includes an identification of major current activities of other organizations in connection with economic development and community improvement opportunities and problems.

(d) The initial OEDP will provide a realistic development program and work program that will be developed and implemented in an effort to:

(1) Promote the district or area's economic progress.

(2) Improve community facilities and services.

(3) Serve as a basis for a continuing planning and development program.

(e) The initial OEDP will be developed with a specific regard for energy conservation concerns and principles, and shall reflect this regard in any developed or proposed plans, programs, or projects.

[38 FR 2271, Jan. 23, 1973, as amended at 45 FR 57962, Aug. 29, 1980; 51 FR 24515, July 7, 1986]

§ 304.5 Initial OEDP for districts.

The requirements for the initial OEDP for districts are those contained in § 304.4 and the following:

(a) The identification and proposal for designation or recognition of at least one economic growth center.

(b) An economic growth center program describing the role to be played by the proposed center in the implementation of the district wide development program, particularly as it relates to the redevelopment areas.

§ 304.6 Submission of initial OEDP.

When the initial OEDP is completed, the following steps shall be taken to obtain EDA approval:

(a) The initial OEDP of the area or district to be designated is to be reviewed by appropriate governmental bodies and all organized interest groups, especially the appropriate State agency, and the EDA Regional Office.

(b) Dissenting opinions or comments from the above entities shall be submitted to EDA as attachments. If no comments are received, there shall be a note from the submitting party indicating to whom and when the OEDP was sent to the various organizations for comments.

(c) The OEDP committee shall reproduce the initial OEDP in sufficient quantity for the use of all groups taking part in the program. The local organization shall submit seven copies to its EDA Economic Development Representative including one copy for his use and six copies for the EDA Regional Office. Two copies shall also be sent to the State agency designated by the Governor to handle EDA activities and to the appropriate Regional Commission, if any.

(d) The EDA Regional Office Planning and Technical Assistance Division staff will review the OEDP for its adequacy. If the OEDP is approved by the Regional Office, the Economic Development Administration in Washington will be notified. If, however, the Regional Office finds the initial OEDP inadequate, it will contact the chairman of the OEDP committee by letter and outline the required revisions or request a supplement.

[38 FR 2271, Jan. 23, 1973, as amended at 51 FR 24515, July 7, 1986]

§ 304.7 The continuing program.

After setting up and organizing the committee and submitting the initial OEDP, the area or district shall implement the development program, and periodically update the development program with annual progress reports, § 304.8, or with a revised OEDP, § 304.9.

§ 304.8 Progress report.

(a) The OEDP annual report for the annual designation and eligibility review for redevelopment areas shall be submitted after April 1, but not later than June 30, of each year, covering the preceding calendar year.

(b) If located within an economic development district, a redevelopment area may, at its discretion, notify EDA annually, on or before June 30, that the district annual OEDP progress report satisfactorily covers the area's own planning and programming.

(c) The annual progress report for districts shall be submitted annually 30 days after the anniversary date of the EDA planning grant, Part 307, Subpart B, and shall cover the period of the planning grant. Those districts which do not receive EDA planning grants, shall submit the report annually within 30 days of either their district designation date or their fiscal year.

(d) Extensions for submitting the area and district progress reports will be granted only under exceptional circumstances.

(e) Areas and districts submitting an initial or revised OEDF during the last quarter of the calendar year will not be required to submit an annual progress report by June 30. The report will be due the following year covering a period of 1 year to 15 months.

(f) If the annual OEDP report has not been submitted by June 30, or cannot be approved, the Regional Director:

(1) Will inform the area or district chairman of the nonreceipt or disapproval of the progress report.

(2) Will direct a member of the EDA regional office staff to visit and consult with the area or district chairman on the most expeditious way of submitting the progress report.

(3) May allow a reasonable extension of time (not to exceed 60 days) to prepare the report or supplemental data. Under very exceptional circumstances the Regional Director may allow a further extension. However, the report must be received not later than September 15.

(4) Will recommend that the Assistant Secretary notify the State and the affected area or district officials that the eligibility status of the area or district is suspended pending receipt of an acceptable progress report if the progress report has not been received within the required time period. This

means no applications for projects for financial assistance from the affected area or district will be approved.

(g) If an unacceptable progress report was submitted, a supplement covering the deficiencies shall be prepared by the OEDP committee.

[38 FR 2271, Jan. 23, 1973, as amended at 39 FR 44960, Dec. 30, 1974; 51 FR 24515, July 7, 1986]

§ 304.9 Revised OEDP.

(a) A revised OEDP will be required if EDA determines that the initial OEDP of the area or district is inadequate.

(b) A revised OEDP will be required if EDA determines that the initial OEDP is outdated.

(c) An area or district shall also revise its initial OEDP if the OEDP committee determines that a complete reassessment of the local situation or a complete reassessment of the economic development program is desirable.

(d) A revised OEDP may be submitted in lieu of the annual OEDP progress report. Failure of an area or district to submit a revised OEDP in acceptable form within the time specified, and extensions thereof, may result in the suspension or termination of such area's or district's designation after 30 days written notice by EDA.

(e) Before any revised OEDP for a district is approved by EDA, it shall be reviewed by appropriate governmental bodies and all organized interest groups, especially the appropriate State agency, and the EDA Regional Office.

[38 FR 2271, Jan. 23, 1973, as amended at 40 FR 2796, Jan. 16, 1975; 51 FR 24515, July 7, 1986]

PART 305—PUBLIC WORKS AND DEVELOPMENT FACILITIES PROGRAM

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AUTHORITY: Section 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211). Sec. 1-105, DOC Organization Order 10-4, as amended (40 FR 56702, as amended).

SOURCE: 38 FR 2272, Jan. 23, 1973, unless otherwise noted.

Subpart A—Direct and Supplementary Grants for Public Works and Development Facilities

§ 305.1 Purpose.

The purpose of this subpart is to set forth the requirements and procedures pursuant to which eligible applicants in designated areas may receive Public Works direct and supplementary grants under Title I of the Act.

§ 305.2 Applicants.

The following applicants are eligible for Public Works direct and supplemental grants, provided such projects are located in designated areas.

(a) Any State or political subdivision thereof, including municipalities, and all agencies, instrumentalities, and quasi-public corporations and authorities created by a State or political subdivision thereof.

(b) Indian tribes.

(c) Any private or public nonprofit organization or association representing any redevelopment area or part thereof, if EDA determines that the organization or association is potentially capable of furthering the objectives of the economic development program of the area in which it is located.

§ 305.3 Direct grants for Public Works projects.

(a) The Assistant Secretary may make direct grants not exceeding 50 percent of the costs of public works and development facility projects if he determines that the project for which the grant is sought will:

(1) Directly or indirectly:

(i) Tend to improve the opportunities in the designated area where the project is or will be located for the successful establishment or expansion of industrial or commercial plants or facilities, or

(ii) Otherwise assist in the creation of additional long-term employment opportunities for such area, or

(iii) Primarily benefit the long-term unemployed and members of low-income families or otherwise substantially further the objectives of the Economic Opportunity Act of 1964.

(2) Fulfill a pressing need of the designated area or part thereof in which it is or will be located; and

(3) Be consistent with a currently approved OEDP for the area in which it is or will be located.

(b) In the case of projects to be located in economic development centers, the following requirements mus be met in addition to paragraphs (a (1) and (2) of this section:

(1) The amount of Federal financia assistance extended must be reasonably related to the size, population and economic needs of the economi development district;

(2) The project must enhance th economic growth potential of the economic development district or result i additional long-term employment opportunities commensurate with th amount of Federal financial assistanc extended;

(3) The project must further the obectives of the economic development district in which it is or will be located.

(c) In the case of a project to be located in an economic development district pursuant to section 403(j) of the Act such project shall meet the requirements as would be applicable to the project if it were located wholly within the redevelopment area for which it is determined to be a direct and substantial benefit.

[38 FR 2271, Jan. 23, 1973, as amended at 39 FR 44960, Dec. 30, 1974]

§ 305.4 Direct grants for Public Works Impact Program.

The Assistant Secretary may make direct grants not exceeding 50 percent of the cost of a Public Works Impact Program project under sections 101 and 401(a)(6) of the Act, if he determines that the project for which the grant is sought will:

(a) Fulfill a pressing need of the designated redevelopment area or part thereof in which it is or will be located;

(b) Provide immediate useful work primarily through construction jobs to the unemployed and underemployed persons in the redevelopment area or part thereof in which it is or will be located;

(c) Have maximum on-site employment costs as a substantial portion of the total project;

(d) Have the largest possible proportion of the project expenditures within the project area;

(e) Be such that construction can be substantially completed within 12 months from the date of its commencement;

(f) Satisfy public need and timing in getting construction underway and becoming operational.

[39 FR 7576, Feb. 27, 1974]

§ 305.5 Supplementary grant rates.

(a) Subject to the limitation on the maximum Federal share of project financing set forth in this section, EDA may make supplementary grants to enable eligible applicants under § 305.2 to take maximum advantage of EDA direct grants under § 305.3 and § 305.4 and to enable such applicants to take maximum advantage of such existing or future Federal grant-in-aid programs that in the opinion of the Assistant Secretary further the purposes of the Act.

(b) In determining the amount of supplementary grant assistance, the Assistant Secretary will take into consideration the following factors:

(1) The nature of the project to be assisted.

(i) Projects of Indian tribes which are concerned with general economic development will be given special consideration, and the Assistant Secretary may reduce or wave the non-Federal share for such projects.

(ii) In the case of projects located in redevelopment areas designated under section 401(a)(6) of the Act and applied for by States or political subdivisions thereof which have demonstrated exhaustion of their effective taxing and borrowing capacity, the Assistant Secretary shall reduce or waive the non-Federal share for such projects.

(A) Exhaustion of effective taxing and borrowing capacity can be demonstrated by showing legal limitations on debt and tax assessments and rates, severe financial difficulties or other factors which prevent the applicant from obtaining the funds necessary for the non-Federal share of the project costs.

(iii) In the case of projects located in redevelopment areas designated under section 401(a)(6) of the Act and applied for by community development corporations which have exhausted their effective borrowing capacity, the Assistant Secretary may reduce or waive the non-Federal share for such projects.

(A) This authority will be used when necessary to prevent the loss of a project because of the applicant's inability to provide the non-Federal share.

(B) Exhaustion of effective borrowing capacity can be demonstrated by showing legal limitations on debt, or practical limitations on increasing debt, severe financial difficulties or other factors which prevent the applicant from borrowing the funds necessary for the non-Federal share of the project costs.

(iv) In the case of projects for which EDA supplements direct grants of other Federal agencies, the total Federal funding may be up to 80 percent of the project's costs (except as allowed by paragraph (b)(3) (i), (ii) or (iii)) in consideration of the following characteristics of such projects:

(A) The special Federal attention focused on such projects;

(B) The concentrated Federal efforts to assist the communities where such projects are located;

(C) The several program goals which such projects will carry out;

(D) The several Congressional mandates which such projects are required to meet; and

(E) The efficient delivery of Federal assistance through coordinated projects which avoid separate Federal grants and minimize administrative duplication.

(2) The amount of such fair user charges or other revenues as the project may reasonably be expected to generate in excess of those which would amortize the local share of initial costs and provide for its successful operation and maintenance (including depreciation).

(3) The maximum grant rate of funds granted under authority of title I of the Act for projects in designated areas, determined by relative needs, is a follows:

Projects	Maximum grant rates (percent)
(i) Projects of Indian Tribes which are concerned with general economic development will be given special consideration, and the Assistant Secretary may reduce or waive the non-Federal share for such projects	100
(ii) Projects located in redevelopment areas designated under section 401(a)(6) of the act, applied for by States or political subdivision thereof which have demonstrated they have exhausted their effective taxing and borrowing capacity	100
(iii) Projects located in redevelopment areas designated under section 401(a)(6) of the act applied for by community development corporations (as defined in 13 CFR 301.2) which have demonstrated they have exhausted their effective borrowing capacity	100
(iv) Projects located in redevelopment areas designated under section 401(a)(6) of the Act as special impact areas and which were *not* designated under section 401(a)(6) as a result of the October 12, 1976 amendment of section 401(a)(8) of the Act, but which cannot meet the requirement of paragraph (b)(3)(ii) of this section	
(v) Projects located in areas designated under title IV of the Act which have been declared disaster areas by the President of the United States under the Disaster Relief Act of 1974 (Pub. L. 93-288), provided:	
(A) Such areas retain their EDA designations,	
and	
(B) No more than one year has elapsed since the date of such area's disaster area designation	
(vi) Projects located in areas designated under Title IV of the Act in which the median annual family income is $7,412 or below, or the average unemployment rate for the preceding 24 months is 12 percent or higher	
(vii) Projects located in areas designated under Title IV of the Act in which the median annual family income is $7,413 to $8,261, or the average unemployment rate for the preceding 24 months is 10 percent to 11.9 percent	
(viii) Projects located in areas designated under Title IV of the Act in which the median annual family income is $8,262 to $9,110, or the average unemployment rate for the preceding 24 months is 8 percent to 9.9 percent	
(ix) Projects located in areas designated under section 401(a)(6) of the Act solely on the basis of the October 12, 1976 amendment of section 401(a)(8) of the Act by Pub. L. 94-487	
(x) Projects in all other areas	

(c) The maximum grant rate applic ble to each area will be determined the time of designation or at the ti of latest annual review under Part 30 of this chapter, whichever is applic ble.

(d) The applicable maximum gra rate for projects located in econom development districts pursuant to se tion 403(j) of the Act shall be th same as the grant rates for the red velopment areas for which such pro ects are determined to be a direct an substantial benefit.

(e) Notwithstanding paragraphs (c and (d) of this section an applica shall be eligible for the highest app cable maximum grant rate in effe between the time the Assistant Secr tary authorizes the application an the time the project is approved.

(f) Where municipalities over 25,000 population qualify for designation under title IV of the Act and Part 302 of this chapter, but are located in areas already designated thereunder, such municipalities are eligible for the maximum grant under paragraph (b)(3) of this section as if they were designated independent of the existing redevelopment area. In determining the maximum grant rate for such municipalities, EDA will use the appropriate statistical information for the municipality involved, provided that consideration of such information will work to the municipality's advantage.

(Sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); Dept. of Commerce Organization Order 10-4 (Sept. 30, 1975), as amended (40 FR 57602, as amended at 40 FR 58878 and 41 FR 35548))

[43 FR 13369, Mar. 30, 1978, as amended at 44 FR 68818, Nov. 30, 1979; 46 FR 9026, Jan. 28, 1981; 48 FR 23155, May 23, 1983; 48 FR 23810, May 27, 1983; 50 FR 12237, Mar. 28, 1985; 51 FR 24515, July 7, 1986]

§ 305.6 Ten percent bonus supplemental grants.

(a) Subject to the limitation that the maximum Federal share for any project may not exceed 80 percent of the aggregate project cost or 100 percent for projects listed in § 305.5(b)(3) (i), (ii) and (iii), the Assistant Secretary may increase the amount of grant assistance for projects within redevelopment areas by an amount not to exceed 10 percent of the aggregate cost of any such project if:

(1) The redevelopment area is situated within a designated economic development district and is actively participating in the economic development activities of the district; and

(2) The project is consistent with a currently approved district OEDP.

(b) Projects assisted in districts outside redevelopment areas pursuant to section 403(j) of the Act shall not be eligible for 10 percent bonus grants under this section.

[38 FR 2272, Jan. 23, 1973, as amended at 39 FR 44960, Dec. 30, 1974; 42 FR 5599, Jan. 28, 1977]

§ 305.7 Operating grants for health facilities.

(a) The Assistant Secretary pursuant to section 102 of the Act may make grants for the operation of any health project approved for assistance under title I of the Act after the 27th day of September, 1974. Such assistance will be available only in the most needy circumstances.

(b) Grants made under this section may be made up to 100 per centum of the estimated cost of the first fiscal year of operation, and up to 100 per centum of the deficit in funds otherwise available for operation of the facility during the second fiscal year of operation. No grant shall be made under this section unless the operation of the facility will be conducted under efficient management practices designed to obviate operating deficits as determined by the Secretary of Health, Education, and Welfare. No grant shall be made for the second fiscal year of operation unless the operating agency has adopted a plan for the funding of operations on a permanent basis which is satisfactory to the Secretary of Health, Education, and Welfare.

[39 FR 44960, Dec. 30, 1974]

§ 305.8 Grants for construction cost increases.

(a) For the purposes of this section, "construction cost increases" means those costs which the applicant incurs or will incur in completing the project according to the original designs and specifications beyond the project costs set forth in the grant agreement.

(b) The Assistant Secretary may increase the amount of any grant made under the authority of Title I of the Act to a project which meets all the following conditions:

(1) The project is being or will be constructed in accord with the original designs and specifications or in accord with final plans and specifications which reflect the original intent and purpose;

(2) The project's total cost has increased because of increases in costs based on the original designs and specifications (or based on final plans and

specifications reflecting the original intent and purpose); and

(3) The project has incurred construction cost increases after the grant was made but prior to completion of the project.

(c) *Limitations on amount of grants.* (1) The amount of a grant made under paragraph (b) of this section may be equal to an amount based on the percentage increase in the costs referred to in paragraph (b)(2) of the section, as determined by the Assistant Secretary.

(2) A construction cost increase grant may not be in an amount which would cause the Federal share of the project's costs to exceed the percentage originally provided for in the grant agreement

[42 FR 5596, Jan. 28, 1977, as amended at 44 FR 3959, Jan. 19, 1979; 46 FR 9026, Jan. 28, 1981]

Subpart B—Public Works and Development Facility Loans

§ 305.21 Purpose.

The purpose of this subpart is to set forth the requirements and procedures pursuant to which eligible applicants in designated areas may receive loans for public works and development facilities under section 201 of the Act.

§ 305.22 Applicants.

The following applicants are eligible for Public Works and Development Facility loans, provided such projects are located in designated areas.

(a) Any State or political subdivision thereof including municipalities, and all agencies, instrumentalities, and quasipublic corporations and authorities created by a State or political subdivision thereof.

(b) Indian tribes.

(c) Any private or public nonprofit organization or association representing any redevelopment area or part thereof if EDA determines that the organization or association is potentially capable of furthering the objectives of the economic development program of the area in which it is located.

§ 305.23 Loan requirements.

The Assistant Secretary may purchase evidence of indebtedness and make loans for public works and development facilities in redevelopment areas and centers if he determines that:

(a) The project for which the loan is sought will directly or indirectly:

(1) Tend to improve the opportunities in the redevelopment area or center where the project is or will be located, for the successful establishment or expansion of industrial or commercial plants or facilities;

(2) Otherwise assist in the creation of additional long-term employment opportunities for such redevelopment area or center; or

(3) Primarily benefit the long-term unemployed and members of low-income families or otherwise substantially further the objectives of the Economic Opportunity Act of 1964;

(b) The funds requested for such project are not otherwise available from private lenders or from other Federal agencies on terms which in the opinion of the Assistant Secretary will permit the accomplishment of the project;

(c) The amount of such loan plus the amount of other available funds for such project are adequate to insure the completion therof;

(d) There is a reasonable expectation of repayment; and

(e) The project is consistent with currently approved OEDP for the area, or district (if any), in which it will be located;

(f) In the case of a project to be located in an economic development district pursuant to section 403(j) of the Act, such project shall meet the requirements as would be applicable to the project if it were located wholly within the redevelopment area for which it is determined to be a direct and substantial benefit.

[38 FR 2272, Jan. 23, 1973, as amended at FR 44961, Dec. 30, 1974]

§ 305.24 Maturity of loans.

Loans must be repaid within the minimum reasonable time which the Assistant Secretary finds to be consistent with the financial capabilities prospects of the applicant. In no event may a loan, including renewals and extensions thereof, be made, or evidence of indebtedness be purchased, with a maturity exceeding 40 years.

§ 305.25 Interest rates.

Loans made under this subpart will bear interest at a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 percent, less not to exceed one-half of 1 percent per annum.

Subpart C—Specific Types of Projects

§ 305.41 Purpose.

The purpose of this subpart is to set forth requirements for certain specific types of public works and development facility projects which EDA may fund under this part. (This applies to all public works projects except as specifically exempted in the following sections.)

[50 FR 726, Jan. 7, 1985, and 51 FR 1783, Jan. 15, 1986]

§ 305.42 Health-related facilities.

(a) EDA will not fund a project involving health-related facilities unless there is no other source of Federal assistance available to fund that portion of the project for which EDA assistance is requested. In addition EDA will not fund such projects unless:

(1) The Department of Health and Human Services and the State Health Planning and Development Agency, if appropriate, concur; and

(2) The project meets the requirements of this section and this part.

(b) Except as provided in paragraph (c) of this section, EDA will not fund health-related facilities unless EDA determines that:

(1) The proposed facility is immediately necessary to the retention, expansion or establishment of an identified commercial or industrial enterprise which has significant employment potential in relationship to the cost of the facility (job/cost ratio of $10,000 or less to one job—in calculating this ratio, EDA will not consider the effect of construction employment and employment in the operation of the health facility);

(2) The proposed project is the first priority in the Overall Economic Development Program (except for PWIP projects under § 305.4) of the area and is an integral part of the implementation of the projected plan for long-term economic development;

(3) The proposed facility meets appropriate accreditation standards; and

(4) The lack of medical facilities is seriously hampering the implementation of economic development programs of the community in which the project will be located or of the broader area planning and development districts in which the community is located.

(c) EDA may consider funding projects which do not meet all of the requirements of paragraph (b) of this section—

(1) For clinics and outpatient facilities on Indian reservations if the proposed project meets the requirements of paragraphs (b)(3) and (b)(4) of this section;

(2) For clinics and outpatient facilities located in neighborhoods with a significant number of disadvantaged persons if the proposed project meets the requirements of paragraphs (b)(3) and (b)(4) of this section;

(3) In exceptional circumstances, for other types of projects which otherwise meet the requirements of paragraph (b) and for which the Assistant Secretary has waived the requirement of paragraph (b)(1) of this section; or

(4) For projects for which EDA is supplementing assistance from the Department of Health and Human Services for construction, renovation or alteration of health facilities, if the projects otherwise meet the requirements of paragraph (b) above and the Assistant Secretary has waived the requirement of paragraph (b)(1) of this section.

(Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended))

[46 FR 860, Jan. 5, 1981]

§ 305.43 Industrial parks and sites.

(a) Financial assistance is provided for public works and development facilities which will serve industrial parks on sites owned by public entities or nonprofit organizations where the purpose of such assistance is to provide sites for new industries in order to accelerate the economic development process of the community. The following requirements, in addition to those contained in Part 314 Subpart A, must be satisfied for such assistance.

(1) Options held by eligible applicants to purchase land for industrial parks and sites must normally be exercised prior to construction of the project.

(2) The applicant owners or operators of an industrial park or site must convenant not to sell, lease, or otherwise make any part of such premises available for occupancy by any person, firm, or entity, unless the occupant first furnishes to the applicant, for transmittal to EDA, properly executed EDA forms:

(i) Evidencing the assurance of such occupant to comply with the Civil Rights Act of 1964, and

(ii) Evidence that such occupancy is not in violation of the relocation prohibition of section 202(b)(1) of the Public Works and Economic Development Act of 1965, as amended. (See § 309.3 of this chapter.)

(3) [Reserved]

(4) Public works assistance for direct site improvement or preparation of land may be considered only where it is for the purpose of reclaiming useless or uneconomic land in order to enable it to become available for long-term productive use, where no other suitable land is more readily or economically available, and where the proposed reclamation is for the primary benefit of the entire community. In such cases, assistance is strictly limited to site preparation directly connected with the reclamation aspects of the project.

(b) Financial assistance for public works and development facilities to serve privately owned industrial parks or sites may be considered, provided one or more of the following conditions are met:

(1) The private developer has secured binding commitments from industrial tenants for the use and occupancy of a sufficient portion of the land to warrant participation in the project, and the sale price of the land would not be raised as a result of the facilities assisted under the Act.

(2) Public works facilities to be assisted will serve primarily a publicly owned industrial park or site or any other public purpose, and only incidentally will serve privately held industrial land.

(3) The owner or operator of a privately owned industrial park or site will enter into an agreement with the applicant, subject to approval by EDA, that for a reasonable length of time satisfactory to EDA he will sell his unoccupied land at the fair market value existing prior to its improvement by the public works and development facilities project.

(4) The land to be served is held by an industrial firm or firms committed to construct or expand plant facilities which will employ the unemployed and underemployed in the area.

(5) The project will serve portions of a privately owned industrial park occupied by industrial firms, which require the availability of public works facilities in order to increase or expand their operations and employment. However, participation in such projects generally will be limited to serving the requirements of the identifiable users, unless the owner or operator commits himself to the requirements of paragraph (b)(3) of this section.

(c) *Land assembly projects and other projects involving the acquisition of land for sale to private parties.* Where the purpose of the project is to assemble land for subsequent resale to private parties in order to attract businesses to an economically distressed area, EDA may provide financial assistance for such projects provided that the Assistant Secretary determines that the project meets the requirements of § 305.65(d) and this part.

[38 FR 2272, Jan. 23, 1973, as amended at 40 FR 60038, Dec. 31, 1975; 42 FR 60910, Nov.

30, 1977; 45 FR 44258 July 1, 1980; 45 FR 74900, Nov. 15, 1980]

§ 305.44 Tourism and recreation.

(a) An applicant qualified under the Act, which is actively cooperating in the implementation of a comprehensive tourism development program and which is able to demonstrate its capability to undertake and administer a project in the tourism and recreation field, may be eligible for assistance for tourism and recreation projects.

(b) Tourism and recreation projects, except projects receiving assistance under Title X of the Act, or Public Works Impact Program (PWIP) projects in which the tourism or recreation aspects are incidental to the aspects which meet the criteria set forth in § 305.4 of this part, must meet the following requirements:

(1) There must be an overall plan for development of the tourism potential of the area in which the project is to be located on a scale sufficient to attract visitors from outside the area.

(2) The project must be a multifaceted tourism complex or an integral and essential part thereof, including facilities attractive to varied age groups and opportunities for both active and passive recreation. Projects which are not related to development of a varied tourism complex, but are of local value only, such as community swimming pools or municipal golf courses, will not be eligible.

(3) The applicant must show that:

(i) Development of tourism and recreation potential offers the only opportunity for economic growth; or

(ii) Development of tourism and recreation potential will result in a significant broadening of the economic base.

(c) Grants may be provided for the construction of facilities which will ultimately be leased or rented to private profit making organizations, subject to terms and conditions acceptable to the Assistant Secretary.

[38 FR 2272, Jan. 23, 1973, as amended at 50 FR 726, Jan. 7, 1985; 51 FR 1783, Jan. 15, 1986]

§ 305.45 Skill training center facilities.

(a) *General policies.* EDA may consider projects to provide for the construction or renovation of skill training centers only if:

(1) The skill center will improve the linkages between economic development activities and employment and training opportunities for the unemployed and underemployed.

(2) The skill center is an integral part of the local economic development strategy.

(3) The skill center program is designed in such a way that a major part of the program is focused on training unemployed and underemployed adults and out-of-school youths (the "target population").

(4) The skill center provides a direct linkage with the CETA program or State or local vocational education programs, and there is assurance of long-term operational support for the center from any of these programs.

(5) The skill center proposal will provide funds for developing skill center facilities by rehabilitating existing structures. Proposals for constructing new buildings will be considered only where there are no appropriate existing buildings or where it is more cost-effective than rehabilitating existing structures.

(6) The proposal does not involve secondary or post-secondary vocational schools or junior or community colleges, unless such institutions are the only ones available to provide training for the target population and the proposal otherwise meets the requirements of this section.

(7) The skill center facilities will be used for direct training purposes, including supporting offices. Unrelated facilities such as recreation buildings and office space for non-related purposes will not be funded as part of EDA's support for skill training centers.

(8) Ths skill center proposal is cost-effective, as determined by amount of EDA funds requested per annual training slots created.

(9) The proposal involves a bona fide skill training center—sheltered workshops will be considered if they are bona fide skill training centers.

(b) *Additional project requirements.* In addition to the general requirements set forth in paragraph (a) of this section, a skill center project (or the component thereof funded by EDA) must:

(1) Be a top priority of the area's Overall Economic Development Plan (OEDP) or Comprehensive Economic Development Strategy (CEDS).

(2) Provide more than 50 percent of its hours of training to the EDA skill training target population (i.e., unemployed and underemployed adults and out-of-school youths).

(3) Provide training in needed skills that have been determined to be in short supply in the center's labor market area.

(4) Be included in the State vocational education plan, and, in the case of public institutions, be approved by the State Advisory Council or director for vocational education.

(5) Be located in an area which is easily accessible to the target population.

(6) In the case of sheltered workshops, provide training where at least 75 percent of the people receiving such training will move on to jobs in the private sector, or no more than 25 percent of the persons training will remain permanently in the sheltered workshop, whether or not they are working on "outside" contracts.

(c) *Applications.* Applications for skill training center projects must:

(1) Indicate that a working relationship and link to local private industry (e.g., through Private Industry Councils) has been established in order to maintain an ongoing supply-demand relationship for the trainees of the center.

(2) Include plants for job development and placement by using existing Employment Service programs and by establishing a formal staff function at the center. These plans must identify procedures for contacting potential employers and for placing trainees in appropriate jobs. Such plans must also identify follow-up mechanisms for monitoring recently placed trainees.

(3) Establish the need for the facility by providing evidence sufficient to demonstrate that there are no similar institutions in the area which can provide the necessary services.

(4) Provide signed statements of intent for long-term support for the operation and administration of the Center from the existing CETA or State or local vocational education programs.

(5) Include procedures for recruiting the target population as trainees.

(6) Include a transportation program which will provide adequate, economical and convenient transportation to serve the target population of the area where public transportation is not available.

(7) Provide a systematic plan for training a present and future labor force for identifiable jobs which includes:

(i) Training and retraining programs for the target population in regularly scheduled daytime, as well as afternoon-evening sessions where appropriate to the needs of the area;

(ii) An open entry/open exit program which allows trainees to enter programs at frequent intervals and to complete a course whenever fully trained; and

(iii) Remedial or compensatory programs designed to focus attention on the special needs of the educationally disadvantaged students. These programs should be run prior to, or concurrently with, skill training to allow the student to receive some of the basic educational skills necessary for effective training and gainful employment. The programs should include such services as intake, guidance and counseling and supporting services. In addition, they should provide concentrated courses in English, communication skills, and basic arithmetic.

(8) For a skill center already in existence, describe its past performance record including the number of trainees, the proportion of the trainees which were CETA trainees, the completion rate and the placement rate.

(9) Indicate that students will not be charged tuition fees. If tuition is required by State statute, funds must be made available to ensure that no member of the target population is denied any services of the skill center for economic reasons.

(10) Indicate that a high school diploma will not be an entry requirement.

(d) *Monitoring.* Projects funded under this section are subject to periodic monitoring by EDA during construction and after completion of the project.

[45 FR 74901, Nov. 13, 1980]

Subpart D—Limitations

§ 305.51 Assistance limitation by State.

Not more than 15 percent of the total amount appropriated by Congress for the purposes of title I of the Act may be made available for public works and development facilities within any one State.

§§ 305.52—305.53 [Reserved]

§ 305.54 Employment of local labor.

(a) The maximum feasible employment of local labor shall be made in the construction of public works and development facility projects receiving direct grants and loans. Accordingly, every contractor and subcontractor undertaking to do work on any such project which is or reasonably may be done as on-site work, shall be required to employ in carrying out such contract work, qualified persons who regularly reside in the designated area where such project is to be located, or in the case of economic development centers, qualified persons who regularly reside in the center or in the adjacent or nearby redevelopment areas within the economic development district, except:

(1) To the extent that qualified persons regularly residing in the designated area or economic development district are not available;

(2) For the reasonable needs of any such contractor or subcontractor to employ supervisory or specially experienced individuals necessary to assure an efficient execution of the contract;

(3) For the obligation of any such contractor or subcontractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that in no event shall the number of nonresident persons employed under this subparagraph exceed 20 percent of the total number of employees employed by such contractor and his subcontractors on such project.

(b) Every such contractor and subcontractor shall furnish the U.S. Employment Service office in the area in which the public works or development facility project is located with a list of all positions for which it may from time to time require laborers, mechanics, and other employees, the estimated numbers of employees required in each classification, and the estimated dates on which such employees will be required;

(c) The contractor shall give full consideration to all qualified job applicants referred by the local employment service, but is not required to employ any job applicants referred whom the contractor does not consider qualified to perform the classification of work required;

(d) The payrolls maintained by the contractor shall contain the following information: The employee's full name, address, and social security number and a notation indicating whether the employee does, or does not, normally reside in the area in which the project is located or, in the case of an economic development center, in such center or in an adjacent or nearby redevelopment area within the economic development district;

(e) The contractor shall include the provisions of this section in every subcontract for work which is, or reasonably may be, done as on-site work.

§ 305.55 Project review and comment by local governmental authorities.

When the applicant is not the State, county, city, town, parish, village, or other general-purpose governmental authority of the area in which a project is to be located, the applicant must afford the appropriate local governmental body 15 days in which to review and comment upon the proposed project, and then must submit such comments, or a detailed statement of the efforts made to obtain them, with the application for Federal assistance. The following guidelines will determine which governmental body should review and comment in particular cases:

(a) If the project is located within an incorporated municipality, or substantially affects only one municipality, appropriate officials of the municipal government affected must be asked to review and comment upon the project.

(b) If the project is located outside the limits of any incorporated municipality and affects more than one municipality, the appropriate officials of the county in which it is located must be asked to review and comment upon the project.

(c) If the project is located within an Indian reservation, appropriate authorities of the reservation must be asked to review and comment upon the project.

(d) If the project substantially affects several major political subdivisions, review and comment by several local governments may be required, as the Assistant Secretary may deem appropriate.

(e) Additional time for comment may be requested by local governmental authorities.

§ 305.56 Technical feasibility.

Completed plans and specifications are not required in applications for public works and development facilities.

(a) Sufficient information to determine the nature and scope of the project, its probable useful life, and a reasonable estimate of cost is required.

(b) The design and performance criteria must conform to professional recognized national standards and must adequately define the technical capability of the project to serve current and foreseeable needs.

(c) Evidence of unorthodox design must be fully justified by the applicant.

[38 FR 2272, Jan. 23, 1973, as amended at 39 FR 7779, Feb. 28, 1974]

§ 305.57 Comprehensive planning.

A project should result from and conform to the OEDP for the area and, where applicable, should be designed as an integral part of any existing or planned functional system unless EDA determines there is sufficient justification for deviation.

§ 305.58 Architect/Engineer Agreements.

The architect/engineer agreement shall provide for all services required by the recipient for the planning, design and construction phase administration of the proposed project. Appropriate standards or guides developed by such professional organizations as the American Consulting Engineers Council (ACEC), American Society of Civil Engineers (ASCE), National Society of Professional Engineers (NSPE), and/or the American Institute of Architects (AIA) may be used where the grantee does not have standard procurement documents.

[39 FR 44961, Dec. 30, 1974]

§ 305.59 Energy conservation and other requirements.

(a) *Energy conservation.* In order to promote the conservation of energy in connection with public works facilities assisted under this part, applicants are encouraged to comply with the following procedures:

(1) Prepare an energy efficiency analysis of the facilities for which EDA assistance is requested. Such analysis may include the following:

(i) The overall design of the facilities;

(ii) Special conservation measures to be utilized;

(iii) Fuel requirements for heating, cooling and production processes of the facilities;

(iv) Consideration given to the use of cost-effective alternative and renewable energy sources for heating, cooling and production processes of the facilities; and

(v) BTU savings resulting from the design of the facilities compared to standard design criteria.

(2) Where appropriate, and where available, the following information concerning energy considerations of the firms which will use the facilities for which EDA assistance is requested:

(i) Fuel needs;

(ii) Fuel sources;

(iii) Transportation needs;

(iv) Provisions being made for renewable fuel sources; and

(v) Energy conservation decisions made in order to determine the site and users of the facilities.

(3) Applicants, where able, may base the energy efficiency analysis on energy evaluation techniques which are broad enough to permit the use o any recognized and accepted method

ology that is most appropriate to project needs.

(4) Each design change, where appropriate, evolving from the basic design which results in higher initial costs and lower energy consumption may be justified by a life cycle cost analysis. The life cycle cost methodology employed may be consistent generally with the Department of Energy's Methodology and Procedures for Life Cycle Cost Analyses, as set forth in 10 CFR Part 436.

(5) Applicants may, where able, incorporate into the project those energy conservation features identified in the energy efficiency analysis unless funds are not available from EDA and/or the applicant to cover the costs of such measures, or unless there are other overriding economic development considerations;

(6) The requirements of this subsection apply to applications authorized on or after October 1, 1980.

(b) *Other requirements.* The requirements of Part 309 of this chapter apply to this part, as appropriate.

[45 FR 57962, Aug. 29, 1980, as amended at 47 FR 19983, May 10, 1982; 51 FR 1492, Jan. 14, 1986]

Subpart E—Project Costs

§ 305.61 Purpose.

The purpose of this subpart is to set forth requirements and procedures with regard to project costs in public works and development facility projects.

§ 305.62 General criteria for eligible project costs.

EDA will participate in the costs of a project to the extent to which EDA determines such costs are eligible for assistance. To be eligible for assistance, costs must meet the following general criteria:

(a) Costs must be necessary and reasonable for the project, and not general expenses required to carry out the overall responsibilities of the recipient.

(b) Costs must be authorized or not prohibited by applicable Federal, State, or local laws or regulations.

(c) Costs must be accorded consistent treatment through application of appropriate generally accepted accounting principles.

(d) Costs must not be allocable to or included as a cost of any other federally financed project in either the current or a prior period.

§ 305.63 Unallowable project costs.

The following costs are not allowable project costs:

(a) Bad debts, including any losses arising from uncollectible accounts and other claims, and related costs.

(b) Costs resulting from changes in project scope.

(c) Contributions and donations.

(d) Entertainment, including costs of amusements, social activities, and incidental costs relating thereto.

(e) Fines and penalties, including costs resulting from violations of, or failure to comply with, Federal, State, and local laws and regulations.

(f) Governor's expenses, including the salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision.

(g) Interest and other financial costs unless specifically allowable by EDA.

(h) Legislative expenses, including salaries and other expenses of the State legislature or similar local governmental bodies, whether incurred for purposes of legislation or executive direction.

(i) Under-recovery of costs under grant agreements.

§ 305.64 Preliminary expenses as eligible project costs.

Eligible project costs for preliminary expenses include specific costs, except for construction costs, for noncustomary engineering or special services incurred prior to submission of the application for financial assistance, which costs are directly related to the development and/or the feasibility of the project or the application. Where supplementary grant assistance to that of another Federal agency is being provided, the policies of that agency apply and only those preapplication costs recognized by the other agency will be considered eligible.

§ 305.65 Land, easements, and rights-of-way as eligible costs.

(a) Costs necessary for project site acquisition, including, land, rights-of-way, and easements, may be eligible if they meet the requirements of this section and § 305.72, if applicable.

(b) Costs directly related to such acquisition, including costs of deeds, title search/title clearing, and appropriate surveys may also be allowed as eligible project costs.

(c) When financial assistance is provided under the Act for a project, tandem to or interconnected with, a project funded by another Federal agency, costs for land on which to construct both facilities may be included in the EDA assistance.

(d) *Land assembly projects and other projects involving the acquisition of land for sale to private parties.* Where the original purpose of the project is to acquire land for sale to private parties, costs associated with the acquisition of land and with site improvement (including demolition) may be eligible if the Assistant Secretary determines that:

(1) Federal assistance for land assembly is necessary for the successful implementation of the project;

(2) Significant economic development impacts will occur and that there are plans to use the land within a reasonable length of time;

(3) Costs for acquisition of the land are not prohibitive;

(4) The grantee has the capacity to market the land and to reuse successfully the proceeds of the sale;

(5) The sale cost of the land and the grantee's arrangements for the sale are adequate;

(6) The proceeds of the sale of the land will be placed in an escrow account to be used by the grantee for other economic development activities approved by EDA;

(7) The sale of the land will not provide windfall profits to private interests;

(8) When the land is sold it will be used for the original purpose of the project in accord with § 314.3 and § 314.6(a)(2) of this chapter; and

(9) The requirements of Part 314 of this chapter will be met.

[38 FR 2272, Jan. 23, 1973, as amended at 45 FR 74901, Nov. 13, 1980]

§ 305.66 Construction costs as eligible project costs.

Eligible project costs for construction of the project include the reasonable costs of construction work to be performed under contract, including the cost of such necessary fixtures and appurtenances as are approved by EDA as part of the project. However, such costs must be reasonable and comparable to the cost of similar work awarded through open competitive bidding in the geographic area of the project.

§ 305.67 Machinery and equipment as eligible project costs.

The costs of essential movable (and where appropriate fixed), machinery and equipment needed to carry out the project, as determined by EDA, are allowable as eligible project costs. Expendable supplies, equipment available on a rental or lease basis, stockage items in excess of initial operating requirements, and luxury items are not eligible for assistance.

§ 305.68 Architect/engineer services as eligible project costs.

(a) Eligible project costs may include costs for architect/engineer fees, resident inspection, test borings, and testing of materials provided under an agreement or contract with the recipient. However, the architect/engineer fees should be based on existing professional fee schedules and the other costs will be evaluated for conformity with similar costs in the geographic area of the project during the construction period.

(b) It is EDA policy to require the utilization of fixed price or cost-ceiling contracts. Agreements allowing compensation to the architect/engineer based on a percentage-of-construction-cost type of fee contract are generally not acceptable.

[38 FR 2272, Jan. 23, 1973, as amended at 39 FR 44961, Dec. 30, 1974]

§ 305.69 Legal and administrative expenses as eligible project costs.

(a) Allowable legal expenses must be reasonable and consistent with professional fees in the area of the project. Such expenses may include costs for any necessary approving opinion of bond counsel, and printing and advertising of bonds or other debt obligations, as well as other legal expenses necessary for the project.

(b) Allowable administrative expenses include the cost for audit and necessary expenses required in the preparation of a bond issue for advertised sale, as well as other administrative expenses necessary for the project.

§ 305.70 Capitalized interest as an eligible project cost.

(a) Capitalized interest during construction may be an eligible project cost for a project in which it is necessary for the recipient to borrow funds to finance construction costs and where State law permits such a loan.

(b) Capitalized interest during development may be an eligible project cost only when an EDA public works and development facility loan has been made for the project. The allowable amount is limited to that which is required to meet interest payments after the project is operating but before income is sufficient to provide for such payment. However, such amount will be an eligible project cost only to the extent that the recipient does no have any other funds or sources of revenue for such interest payments.

§ 305.71 Financial advisors.

(a) *Purpose.* This section describes EDA regulations to be followed in engaging a Financial Advisor when needed for an EDA public works project.

(b) *Policy.* EDA will authorize as an allowable project cost the use of a Financial Advisor when needed to complete funding of an approved public works project. All such Financial Advisors will be selected by the grantee and approved by the Agency. Fees for these services must be reasonable and EDA will participate in accordance with the grant percentage.

(c) *Definition.* A "Financial Advisor" is an individual or firm which is qualified by reason of training and experience to advise the applicant on structuring and marketing a private bond issue needed to complete funding of an approved EDA public works project. It may be an investment banker who deals with municipal securities; a commercial bank with a syndicate department or comparable capability; or a municipal financial consultant who advises on municipal underwritings.

(d) *Financial Advisor services.* (1) The major objectives in the incurrence of long-term debt by a unit of local government are:

(i) The adequacy of the loan and the assurance that funds will be available when needed.

(ii) The arrangement of the loan so that it blends into the existing overall debt structure.

(iii) The issuance and sale of bonds at the lowest interest cost consistent with all other considerations.

(2) Services normally performed by the Financial Advisor are:

(i) *Survey of financial resources.* The Financial Advisor shall make a survey of the financial resources of the issuing subdivision to determine the extent of its borrowing capacity. Such a survey shall include an analysis of the existing debt structure as compared to existing and projected sources of income which may be pledged to secure payment of debt service.

(ii) *Financial plan.* On the basis of information developed by the survey, the Financial Advisor shall establish a financial plan which shall be submitted to the governing body of the issuing subdivision. The financial plan shall be complete as to maturity schedule and estimated interest rate of the proposed bonds and shall reflect the resulting overall amount of debt service requirements as compared to existing and projected income sources.

(iii) *Bond elections.* If a bond election is deemed necessary, the Financial Advisor shall assemble and transmit to the bond attorneys such data as is required in preparation of the necessary petitions, resolutions, notices, etc.

(iv) *Terms of bond issue.* The Financial Advisor shall submit his written recommendations as to the various provisions, terms, and conditions of the proposed bond issue. He shall make recommendations as to the date of the issue, interest payment dates, schedule of maturities, options of prior payment, and place of payment. He shall also, whenever possible, suggest additional security provisions designed to make the issue more attractive to investors.

(v) *Selecting date of bond sale.* In the event the bonds are to be sold at competitive bidding, the Financial Advisor shall make a recommendation as to the date on which bids are to be considered. This recommendation shall be based on an estimate of expected market conditions, having given due consideration to such factors as the general trend of the bond market, conflict with offerings of other such divisions and other known relevant factors.

(vi) *Notice of sale.* If required in the marketing of bonds, the Financial Advisor will be expected to prepare and submit the following:

(*a*) Official Notice of Sale, into which shall be incorporated all necessary information as to time and place of the bond sale, the conditions under which the bonds shall be amended, and the terms and conditions of delivery.

(*b*) Prospectus: Which shall be fully descriptive of the bonds offered and which shall additionally contain complete information on the issuing subdivision.

(*c*) Uniform Bid Form: Containing provisions recognized as standard by the municipal securities industry.

(*d*) Bond Rating: If proper and desirable, to submit to the national bond rating agencies financial and economic data necessary to obtain a rating on the proposed issue.

(vii) *Bond sale—award of bonds.* The Financial Advisor shall be represented at the bond sale by experienced personnel whose services shall be available to the issuing government in the tabulation and comparison of bids.

(viii) *Issuance of bonds.* As soon as a bid for the bond shall be accepted by the issuing agency, the Financial Advisor shall proceed at once with the general consideration of the efforts of all concerned to the end that the bonds may be delivered and paid for as expeditiously as possible. His services shall be available in the passage or adoption of all required ordinances, resolutions and documents which may be required by the Attorney General of the State in which the issuing subdivision is located.

(ix) *Delivery of bonds.* It shall be the duty of the Financial Advisor to inform and assist all concerned with the delivery of the bonds, and to generally coordinate their efforts. He shall notify the purchasers of the time that payment for the bonds can be made and shall assist the issuer in the escrow of closing documents and the giving of proper instruction for the receipt and transfer of bond proceeds.

(3) The fee for Financial Advisory services shall be reasonable and be in keeping with the magnitude of the service performed. Instances may arise where the preparation of the financial package for a relatively small issuer may be intricate and time consuming. The converse situation may also arise where the preparation of a large issue for a municipality with an extensive marketing history may warrant a lower fee than might normally be expected. The financial staff, Technical Support Division, shall review and approve the Financial Advisor's fee submitted with the public works application.

(e) *Selection and approval of Financial Advisors.* Selection of a Financial Advisor for a public works project will be made by the grantee. Those firms interested in participation in the solicitation of financial advisory contracts shall file their qualifications and experience with the appropriate EDA Regional Offices. The financial staff, Technical Support Division, shall review these submissions and notify approved firms that their fees may be considered as acceptable project costs.

(f) *Financial Advisor precluded as bidder.* The Financial Advisor shall be precluded from bidding except in those cases where the best interests of the grantee and the Federal Government make it necessary that they be the bidder. Any request for a right to bid on all or a part of the issue by the Financial Advisor shall be initiated by the grantee.

(g) *Written agreement with Financial Advisor.* Agreement between the grantee and the Financial Advisor shall be in writing and shall include a listing of the services to be performed, substantially as outlined in paragraph (d) of this section, and provisions for reimbursement for services rendered and precluding the Financial Advisor from bidding except in certain circumstances. The contract shall be approved by the financial component of the Office of Public Works.

§ 305.72 Previously acquired assets as part of total project cost.

(a) The value of land and facilities (including buildings, machinery, and equipment) acquired by the recipient before receipt of public works and development facility assistance, may be allowed as part of the total project cost if the following conditions are met:

(1) The land and/or facilities are so physically related to the project as to be required for the successful functioning of the project.

(2) The facility to be constructed substantially exhausts the use of the land.

(3) The project cost does not include more land and/or facilities than EDA determines to be reasonably necessary for the successful completion of the project to be constructed.

(4) Easements and rights-of-way meet the additional requirements of paragraph (d) of this section.

(b) EDA will not grant or lend more than the difference between the total project cost and the value of such previously acquired land and/or facilities.

(c) The value of such previously acquired land and/or facilities will be set at a conservative figure determined by EDA appraisal or by an independent appraiser satisfactory to EDA, but in no event shall the valuation exceed the amount of equity in such assets actually owned by the recipient.

(d) In exceptional circumstances, previously acquired easements and rights-of-way may be included in project costs, however such previously acquired easements and rights-of-way will not be included in project cost at a sum in excess of the lower of their actual cost or their current fair market value. In addition, the following conditions must be met:

(1) The easements and/or rights-of-way must have been purchased for value and for the specific project.

(2) The successful construction of the project must require inclusion of the easements and rights-of-way.

(e) Where an EDA grant is supplementary to a basic grant from another Federal agency, the policy of that agency regarding inclusion of previously acquired assets in the project cost will be controlling.

Subpart F—Disbursement of Funds for Grant and Loan Projects

§ 305.81 Policy for loans.

It is the policy of EDA to purchase, when the project is physically 75 percent complete, the bonds or promissory notes stated in the EDA "Offer of Loan."

§ 305.82 Interim financing in loan projects.

Borrowers may, on request, receive from EDA the form entitled "Statement of Interest with Respect to an EDA Development Loan" to aid them in obtaining interim financing from sources other than EDA. This form is not an unqualified pledge, since the borrower has yet to comply with the terms and conditions of the EDA "Offer of Loan." The terms and conditions of the interim financing are subject to prior approval by EDA.

§ 305.83 Early purchase in loan projects.

(a) EDA may, in its discretion, make an early purchase of all or part of bonds or promissory notes, upon presentation of facts and documentation establishing, to EDA's satisfaction, the borrower's inability to obtain interim financing.

(b) Approval of such early purchase shall be made after receipt by EDA of:

(1) A favorable preliminary approving opinion of bond counsel on the validity of the proposed interim and final bond or promissory note and

(2) Satisfactory evidence of receipt of firm construction, service, and/or supply bids as well as compliance with the other loan conditions required to be fulfilled before disbursement. Advances or partial purchases shall be made in units of not less than 25 percent spaced so as to enable the Borrower to pay incurred costs as they come due. Advances must be deposited in a bank with Federal Deposit Insurance Corporation coverage, and the balances exceeding such coverage must be collaterally secured as provided in 12 U.S.C. 265.

§ 305.84 Bond counsel.

The Borrower must receive prior approval by EDA when engaging bond counsel, trustees, and paying agents. EDA shall approve or disapprove, for its participation, the fees for Bond Counsel and trustees, in part on the basis of compliance with EDA requirements as to bond issues.

§ 305.85 Private participation in bond issues.

(a) It is EDA policy to maximize private participation for each of the designated blocks of the bond issues subject to the offer of purchase by EDA.

(b) The borrower shall accord preference to bids by non-EDA bidders for an entire bond issue over bids for individual or combined blocks, and preference to bids for combined blocks over bids for individual blocks.

(c) In calculating the net interest cost of the respective non-government bids, the borrower shall exclude the bid submitted by EDA.

§ 305.86 Disbursements of funds for grants.

Disbursements of funds for grants are made upon application to EDA for disbursement and

(a) After execution of all contracts required for the completion of the project,

(b) For itemized and certified eligible costs incurred, as substantiated by such documentary evidence as EDA may require,

(c) For the percentage of EDA participation, but in no event for more than the total sum, stated in the "Offer of Grant" accepted by the grantee,

(d) Upon proof that grantee's proportionate share of funds is on deposit,

(e) After a determination by EDA that all applicable conditions of the grant have been met,

(f) Upon proof that the grantee has withheld 10 percent from all contractors and suppliers who have not had EDA inspection and approval, and

(g) After such other requirements as EDA shall establish are met and approved.

Paragraph (a) of these conditions for disbursement may be waived by the Assistant Secretary if the grantee can demonstrate that enforcement of the condition would place an undue burden on the grantee.

[47 FR 15102, Apr. 8, 1982]

§ 305.87 Installments in grant disbursements.

Disbursements are normally made in four installments, as follows:

(a) For up to 25 percent of the total grant, after all contracts are awarded,

(b) For an additional 50 percent when the project is completed to that amount,

(c) For an additional 15 percent when the project is at least 90 percent completed,

(d) For the remaining grant sums when EDA approves a final audit of the eligibility of the project costs, unless such audit indicated another amount is due.

§ 305.88 Construction account for grant funds.

Grantees shall establish a construction account in accordance with applicable Federal law, into which grant funds shall be deposited and from which payments therefrom shall be made. Payments from this account may not be made for change orders without specific EDA approval.

§ 305.89 Variance in cost of grant and loan projects.

(a) In the event the total cost of the project shall exceed the amount stated in the "Offer of Grant," the grant disbursement will be based on the grant rate percentage for EDA participation revised to reflect a figure equal to the rate multiplied by the total project cost.

(b) In the event the total cost of the project shall be less than the amount stated in the "Offer of Grant," the grant rate may be increased up to the maximum amount allowed by law at the time the grant was accepted.

[38 FR 2272, Jan. 23, 1973, as amended at 44 FR 3959, Jan. 19, 1979]

Subpart G—Servicing of Grant and Loan Projects

§ 305.91 Planning conference.

After the EDA offer of financial assistance has been accepted by the applicant, EDA will schedule a planning conference to explain EDA requirements for administration of projects. If representatives of the grantee or borrower, who have been authorized by EDA to attend such conference, must travel to an EDA Regional Office, the costs of such travel shall be eligible for proportionate reimbursement as a project cost.

§ 305.92 Financial systems.

(a) Grantees shall establish financial management systems in accordance with applicable Federal law.

(b) Borrowers shall establish such systems as are necessary in accounting for revenues to be applied to the payment of the loan and for the allocation of expenses.

§ 305.93 Financial records.

Financial records, supporting documents, statistical records, and all other records pertinent to the project shall be kept and preserved so long as any sum shall be due and unpaid to EDA or its successor agency or agencies and for at least 3 years thereafter, with the following qualifications:

(a) If EDA audit findings have not been resolved, these records are to be retained beyond the 3 year period;

(b) Records for nonexpendable property shall be retained for 3 years after its final disposition;

(c) The retention period starts from the date of the submission of the final expenditure report;

(d) In nonconstruction grants and loans, or for construction contracts for less than $100,000, the grantee or borrower shall utilize the retention requirements set by State or local law, as applicable.

§ 305.94 Construction project bonding.

Where construction contracts exceed $100,000, the minimum bonding requirements shall be as follows:

(a) A bid guarantee is required from each bidder equivalent to 5 percent of the bid price,

(b) A performance bond is required on the part of the contractor for 100 percent of the contract price, and

(c) A payment bond is required on the part of the contractor for 100 percent of the contract price.

§ 305.95 Procurement standards.

Grantees shall procure supplies, equipment, construction and other services in accordance with the procurement standards set forth in Attachment O of Office of Management and Budget Circular No. A-102 (State and local governments) or No. A-110 (nonprofit organizations), as appropriate.

(Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended))

[46 FR 9026, Jan. 28, 1981]

§ 305.96 Contracts and subcontracts.

In all contracts and subcontracts, the recipient shall include and require the following:

(a) Provisions for administrative, contractual, and legal remedies, and provide for sanctions and penalties as appropriate.

(b) Contracts in excess of $2,500 shall contain provisions for termination for default as well as for circumstances beyond the control of the contractor.

(c) Contracts and subcontracts shall contain substantially the same provisions contained in the grant and/or loan and which are appropriate to the contractor and subcontractor, such as requirements for compliance with applicable labor standards. The recipient shall establish procedures to assure compliance and to assure that violations are investigated.

(d) Contractors and subcontractors shall maintain records for audit and examination by EDA and the Comptroller General of the United States, as required by § 309.9 of this chapter.

§ 305.97 Title to real property.

The Grantee or Borrower must furnish evidence to EDA that it has good and merchantable title to the real property on which improvements will be located with liens or encumbrances noted, and that it has or can acquire all necessary easements and rights-of-way. The evidence shall be presented in such manner as EDA requires.

§ 305.98 Other requirements.

(a) Grantees and Borrowers shall comply with such additional requirements as are incidental to or explicitly required by the grant and/or loan.

(b) The tabulation of project costs attached to or made a part of the loan or grant or letter transmitting the loan or grant is the controlling budget for the project. Transfer of funds between line items therein may not be made without EDA approval.

(c) Requests by grantees or borrowers for amendments to the grant or loan shall be submitted in writing to the Regional Office for processing, and shall contain such information and documentation necessary to justify the request.

(d) All contract change orders must have prior EDA approval.

(e) A final inspection will be scheduled by the grantee or borrower, with EDA concurrrence and/or participation, when the project has been completed and is functional and when all deficiencies have been corrected.

(f) Proposed subcontractors must submit a properly executed EDA "Certification Regarding Equal Employment Opportunity."

(g) Subcontractors shall submit evidence which will satisfy Federal labor standards statutes.

§ 305.99 Termination for default or for the convenience of recipient.

(a) An appropriate official of the recipient may request EDA to cancel or termiante a public works or development facility project. This request must be accompanied by a certified resolution or ordinance authorizing the requesting party to make such request. Before agreeing to such request, EDA will determine the legal sufficiency of such request.

(b) EDA may initiate a cancellation or termination action for failure by the recipient to proceed or for failure to adhere to the requirements of the grant and/or loan.

§ 305.100 Liquidation and administration of loans and evidences of indebtedness.

In the event that the Assistant Secretary determines that it is necessary or desirable to take actions to protect or further the interests of EDA in connection with loans or guarantees made or evidences of indebtedness purchased under the Act, the Assistant Secretary may:

(a) Assign or sell at public or private sale, or otherwise dispose of for cash or credit, in his discretion and upon such terms and conditions as he shall determine to be reasonable, any evidence of debt, contract, claim, personal or real property, or security assigned to or held by him in connection with loans made or evidences of indebtedness purchased under the Act,

(b) Collect or compromise all obligations assigned to or held by him in connection with such loans or evidences of indebtedness until such time as such obligations may be referred to the Attorney General for suit or collection, and

(c) Take any and all other actions determined by him to be necessary or desirable in purchasing, servicing, compromising, modifying, liquidating, or otherwise administratively dealing with or realizing on loans made or evidences of indebtedness purchased under the act.

PART 306—BUSINESS DEVELOPMENT PROGRAM

Subpart A—Financial Assistance for Industrial and Commercial Purposes

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Subpart B—Project Closing and Servicing

306.31 Project closing.
306.32 Project servicing.
306.33 Liquidation and administration of loans, guarantees and evidences of indebtedness.

AUTHORITY: Sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211) Sec. 1—105, DOC Organization Order 10-4, as amended (40 FR 56702, as amended).

SOURCE: 39 FR 44961, Dec. 30, 1974, unless otherwise noted.

Subpart A—Financial Assistance for Industrial and Commercial Purposes

§ 306.1 Purpose.

(a) The purpose of this subpart is to set forth policies and procedures through which qualified applicants may obtain financial assistance under section 202 of the Act. The following types of financial assistance are available for business development projects for the financing and, with the exception of assistance described in paragraph (a)(5) of this section, the refinancing of debts which create legally obtained liens against property:

(1) Direct loans or purchase of evidences of indebtedness to provide fixed assets.

(2) Direct loans to provide for working capital.

(3) Guarantees of loans to private borrowers by private lending institutions to provide fixed assets.

(4) Guarantees of loans to private borrowers by private lending institutions to provide working capital.

(5) Guarantees of rental payments of leases from qualified lessors for buildings (including the underlying land) and equipment.

(6) Interest subsidies for fixed asset loans guaranteed under this part.

(b) These programs are administered by EDA for the prime purpose of achieving the long-range economic development goals of the Act—creating jobs, increasing incomes, and diversifying local economies—and not to underwrite commercial ventures.

(c) Lease guaranty assistance is primarily available to increase the business development opportunities in distressed areas of large cities, particularly in special impact areas, where vacant buildings are available. This program is intended to be a supplement to, and not a duplication of, the Small Business Administration's lease guaranty program.

(d) Direct working capital loans will only be made if other sources of working capital are not available.

(Pub. L. 94-487, 90 Stat. 2331 (42 U.S.C. 3121 et seq.))

[39 FR 44961, Dec. 30, 1974, as amended at 42 FR 12038, Mar. 2, 1977; 42 FR 26198, May 23, 1977]

§ 306.2 Eligible applicants.

(a) Applications for loans shall be made by the borrower; ordinarily applications for lease guarantees shall be made by the lessee. Where a loan or lease guarantee is requested, additional information must be supplied by the lender or lessor. It is not the policy of EDA to approve a lease guaranty without a known lessee. However, the Assistant Secretary may waive this policy. In request for waiver, the Assistant Secretary will consider, among other things:

(1) The purpose for which the lease guaranty is sought.

(2) Whether the lessor is a public or quasi-public body.

(3) Whether the lessor is seeking the lease guarantee on a solely speculative basis.

(b) EDA may participate with commercial lease guarantors provided all provisions of the Act and Regulations are met.

(c) Private lending institutions include, but are not limited to, commercial banks, savings and loan institutions, insurance companies, factoring companies, investment banking organizations, and venture capital investment companies. Any of the following entities or enterprises may be eligible as an applicant:

(1) A business enterprise including sole proprietorship, partnership, or corporation.

(2) A non-profit organization or association.

(3) A State or political subdivision thereof including municipalities and all agencies, instrumentalities and quasi-public corporations or authorities created by a State or political subdivision therof.

(4) Indian tribes.

(d) Applications for interest subsidies for fixed asset loans guaranteed by EDA shall be made by the borrower of the loan

(1) An application for an interest subsidy shall be made concurrently with the application for the guaranty of the fixed asset loan which it will subsidize.

(Pub. L. 94-487, 90 Stat. 2331 (42 U.S.C. 3121 et seq))

[39 FR 44961, Dec. 30, 1974, as amended at 42 FR 12038, Mar. 2, 1977]

§ 306.3 Types of financial assistance.

The Assistant Secretary is authorized to approve financial assistance, on terms and conditions he shall establish, to:

(a) Provide fixed assets for eligible applicants by either making direct loans or by guaranteeing loans and by providing interest subsidies for such guaranteed loans or by guaranteeing leases to enable the applicant to purchase, develop or lease commercial or industrial land and/or facilities.

(1) The following are the normal kinds of fixed asset costs allowed by EDA:

(i) Land acquisition and improvements.

(ii) Machinery and/or equipment (including also furniture and fixtures).

(iii) Construction costs for new buildings.

(iv) Rehabilitation costs for abandoned or unoccupied buildings.

(v) Alteration, conversion and enlargement costs for existing buildings.

(2) Where fixed assets are leased, lease costs cannot be included as an eligible item for a direct fixed asset loan. Under the lease guaranty program, lease rentals must be reasonable in relationship to the actual costs to the lessor.

(b) Provide working capital for eligible applicants by either making direct loans or by guaranteeing loans by qualified private lending institutions. The following are the normal kinds of working capital items for which EDA may make or guarantee a working capital loan:

(1) Start-up costs including employee training, pre-production sales efforts, and the acquisition of raw materials and supplies.

(2) Cash to meet the borrower's obligations to pay those costs and expenses incident to the conduct of current business such as wages, salaries, material purchases, rents, utilities, taxes, interest and the like and to pay current liabilities other than those incurred in the acquisition of non-current assets or in the reduction of shareholder's equity.

(c) EDA will not ordinarily guarantee revolving type or open-end working capital loans.

(d) The substance of all loan or lease agreements which EDA is being asked to guarantee must be approved by the Assistant Secretary prior to issuance of the guarantee.

(e) Guaranteed loans or leases may be assigned, but such assignments may only be made with the prior approval of the Assistant Secretary.

(f) Lease guarantees by EDA shall extend only to rental payments and not other obligations created under the lease.

(g) Interest subsidies for fixed asset loans guaranteed by EDA may be made in an amount sufficient to reduce by up to four percentage points the interest paid by the borrower on the guaranteed loan; however, no subsidy may reduce the effective interest rate to the borrower below the interest rate charged by EDA for direct fixed asset business development loans or the interest rate charged by EDA for direct fixed asset public works loans, whichever is greater.

(1) An application for an interest subsidy will be approved only if the accompanying application for the guarantee of the fixed asset loan is approved. In addition, approval of an application for an interest subsidy will be based on an evaluation of the following factors:

(i) The financial need of the borrower for the interest subsidy;

(ii) The cost of the interest subsidy in relation to the number of jobs it will affect; and

(iii) The extent of the economic impact of EDA's participation as determined by the total EDA exposure on the guaranteed loan.

(2) In order to establish the amount of the subsidy, a subsidized loan must be made at a fixed rate of interest for the period of time during which the subsidy is to paid.

(3) Interest subsidy payments shall be made annually, or on a more frequent basis as the Asssistant Secretary determines.

(4) Applications for interest subsidies of one (1) percent or less will not ordinarily be accepted for processing by EDA.

(h) Provide for the refinancing of debts which create legally obtained liens against the applicant's property if the Assistant Secretary has made one of the following determinations: such action is necessary to save employment in a designated area; such action is necessary to avoid a significant rise in unemployment in a designated area; or such action is necessary to create new or increased employment in a designated area.

(1) Those debts which can be refinanced may be secured by legally obtained liens on either real, personal, or intangible property of the applicant.

(2) The refinancing authority may only be used in conjunction with forms of business development assistance which are appropriate and allowable under § 306.1(a).

(3) EDA will entertain proposals for refinancing primarily as such proposals pertain to workouts involving high interest costs on short term notes and accelerated loans that are affecting the financial stability of a company to a greater degree than it could possibly sustain, thereby not only jeopardizing existing jobs but the existence of the applicant itself.

(4) In the context of viable applicants intending to expand and create new jobs, EDA will consider some refinancing as part of a larger project in order to simplify lien positions or debt structure.

(5) EDA will not ordinarily consider substituting its exposure, either directly or on a guarantee basis, on existing long-term debt unless such substitution is a minor part of a more comprehensive project. Generally, the amount of such substitution must be less than twenty-five (25) percent of the total project cost. The substitution of lenders must be necessary to either simplify debt structure or free up collateral for the non-refinancing portion of the EDA assistance.

(6) The refinancing authority will not be used to refinance SBA or other (non-EDA) Federal direct or guaranteed loans.

(Pub. L. 94-487, 90 Stat. 2331 (42 U.S.C. 3121 et seq.))

[39 FR 44961, Dec. 30, 1974, as amended at 42 FR 12038, Mar. 2, 1977; 42 FR 26198, May 23, 1977]

§ 306.4 Location.

A business development project must be located within a redevelopment area or an economic development center. It may also be located within a non-eligible part of an economic development district provided it can be shown that the project will provide a substantial direct benefit to a redevelopment area within such district.

§ 306.5 Limitation.

The requirements stated in Part 309 of this chapter are pertinent to business development projects as appropriate.

§ 306.6 Requirement of approval by State or political subdivision.

No application for a business development project will be approved by EDA until such application is approved by an agency or instrumentality of the State or political subdivision in which the project is to be located.

(a) Such agency or instrumentality must be directly concerned with the problems of economic development in such State or political subdivision.

(b) Such approval must include a determination that the project is consistent with the redevelopment area's approved OEDP, except areas which will be designated under the criteria of section 401(a)(4) of the Act. Redevelopment areas or economic development districts which do not have a currently approved OEDP will also be evaluated if:

(1) The area will be designated within a reasonable period of time, or

(2) Appropriate steps have been taken to secure the approval by EDA of an OEDP.

(c) Such approval of an agency or instrumentality shall be in a form satisfactory to EDA.

(d) Such approval may be waived by EDA if the application is to provide working capital for the operation of a commercial or industrial project whose land and/or facilities have been purchased, developed, or leased with the aid of EDA financial assistance.

§ 306.7 Alleviation of unemployment.

A business development project must reasonably provide more than temporary alleviation of unemployment or underemployment within the area in which the project will be located.

§ 306.8 Financing.

A business development applicant must provide evidence that other financing is not available on terms and conditions which, in the opinion of the Assistant Secretary, would permit completion and/or the successful operation or accomplishment of the project. Such evidence will include:

(a) Letters from at least two qualified lending institutions declining to finance any part of the project or in the case of direct EDA loans, to participate in EDA's share of the financing.

(1) In the event only one qualified lending institution is located in the project area or lends in the project area, a letter from one qualified lending institution will be sufficient.

(2) In the event no qualified lending institutions are located in the project area or lend in the project area, applicant's certification to that effect will be sufficient.

(b) In the case of financial assistance involving direct EDA loans for fixed assets, the applicant must include evidence that no qualified lending institution will assist in the project financing other than on a first lien basis.

(c) In the case of guaranteed loans, the applicant must include evidence that no direct financing is available from private lending institutions, as above, and that the lending institution making the loan would not assist in the project financing without the EDA guaranty. In addition, no working capital loan will be guaranteed which is secured by a prior lien on the same assets which secure an EDA fixed asset loan or guarantee.

(d) Evidence that other Federal financial assistance is not available to the project.

(e) In the event that the applicant is a large corporation which would normally have its own funds available or appears to have access to non-Federal funds sufficient to finance the project, such corporation must certify that it would not locate the proposed project within the area if it were not for the benefits of EDA's financial assistance.

(f) In the case of financial assistance involving a direct loan by EDA, the applicant must also show that other lenders will not participate with EDA in its loan.

(g) In the case of interest subsidies for fixed asset loans guaranteed by EDA, the applicant must show that no reasonable interest rate is available to it in the private lending market.

(Pub. L. 94-487, 90 Stat. 2331 (42 U.S.C. 3121 et seq.))

[39 FR 44961, Dec. 30, 1974, as amended at 42 FR 12038, Mar. 2, 1977]

§ 306.9 Repayment.

No loan or loan guarantee application shall be approved unless the Assistant Secretary has determined there is a reasonable assurance that the borrower can repay such loan. It is the policy of EDA to determine that there is reasonable assurance of repayment of rents under a lease before approving a lease guarantee. However, in the event the prospective lessee is not known prior to approval of a lease guarantee, such prospective lessee must be approved by EDA. The approval of a lessee shall be based, but not limited to, a reasonable assurance that the lessee can repay the remaining rents under the lease.

(a) The applicant shall provide, at a minimum, the following financing information to permit the Assistant Secretary to make this determination unless the Assistant Secretary determines certain or all of such information is not necessary.

(1) Current audited financial statements of the applicant, including balance sheets, an income statement with auditors' footnotes, and supporting statements for applicant's three most recent fiscal years.

(2) Audited consolidated financial statements and income statements, with auditors' footnotes, of parent and subsidiaries for the three most recent fiscal years.

(3) Audited financial statements including balance sheets, income statements, and auditors' footnotes, of all affiliated companies for the three most recent fiscal years.

(4) Most recent interim financial statements of applicant, its parent and subsidiaries, certified to by officers of the respective companies and maintained current during EDA loan processing.

(5) Projected pro forma balance sheets, income statements, cash flows and supporting statements of the applicant quarterly from the date of the latest interim financial statements to the date of the commencement of project operations.

(6) Projected pro forma balance sheet at the commencement of project operations, and pro forma balance sheets, income statements, cash flow and supporting statements of the applicant monthly, for the first twelve months of project operations and annually for the three succeeding twelve-month periods. Such statements and balance sheets should reflect applicant's ability to repay debt principal out of earnings commencing within the first three years of operations.

(b) In addition, the applicant shall provide as much of the following nonfinancial information as EDA determines is necessary to allow the Assistant Secretary to substantiate the pro forma projections:

(1) Estimates, firm quotations, receipts, contracts, orders, invoices, leases, or equivalent documentation from architects, engineers, contractors, subcontractors, materialmen, suppliers, lessors or others involved in the sale, lease or construction of fixed assets, if any, for applicant's project including schedules of implementation.

(2) Back-up information regarding applicant's operating costs, including projected employment by job category and applicable wage rates, cost and availability of raw materials and energy.

(c) Applicants are also required to provide EDA with general information about management capabilities, including resumes of top management, and marketing plans.

(d) Applicants will also supply such additional back-up information as EDA may require regarding other collateral securing EDA's financial assistance, such as appraisals and valuations of nonproject assets and guarantees.

§ 306.10 Term.

The term of the financial assistance should be consistent with the purpose for which it will be used and the collateral position of EDA.

(a) The term of a fixed asset loan or guaranty or lease guaranty will ordinarily not be greater than the weighted average useful life of the project fixed assets.

(b) The term of a working capital loan, whether direct or guaranteed, generally should not exceed five (5) years and the loan should be amortized in full during its term.

(c) The term of a guaranty of a lease will generally not be less than five (5) years.

(d) The duration for which an interest subsidy will be paid will generally be not more than five (5) years.

(e) No financial assistance including renewals or extensions may be made for a period exceeding twenty-five years from the date of the note evidencing a loan, the date of purchase of evidences of indebtedness, or the date of a guaranteed lease. In the case of lease guarantys, the lease itself may extend beyond twenty-five years but the Government's liability for guaranteed payments shall cease after the twenty-fifth year.

(Pub. L. 94-487, 90 Stat. 2331 (42 U.S.C. 3121 et seq.))

[39 FR 44961, Dec. 30, 1974, as amended at 42 FR 12038, Mar. 2, 1977]

§ 306.11 Interest and fees.

Financial assistance under this subpart shall bear interest or involve fees at the following rates:

(a) Direct fixed asset loans and evidences of indebtedness purchased by EDA will bear interest at a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of one percent, plus such additional charge, if any, toward covering other costs of the program as the Assistant Secretary may determine to be consistent with its purpose.

(b) Interest charges for direct working capital loans shall be computed based on the interest rate for direct fixed asset loans and purchases of evidences of indebtedness, plus such additional charge as the Assistant Secretary determines is reasonable in view of the higher risk and more limited collateral associated with working capital loans.

(c) Interest on guaranteed loans by private lending institutions must be at not more than their prevailing rates, and must be reasonable with respect to the project.

[39 FR 44961, Dec. 30, 1974, as amended at 42 FR 12420, Mar. 4, 1977]

§ 306.12 Allowable project costs for projects involving fixed assets.

Allowable project costs for EDA fixed asset projects (loans, guaranteed loans, and lease guarantys) may include the cost of land, building, machinery and equipment, and reasonable contingency reserves to cover the possibility of cost increase during processing of the application and during construction, if applicable.

(a) In arriving at the total fixed asset cost of the project, EDA cannot, under the Act, include any item which is considered as properly allocable to working capital.

(b) Other types of costs which cannot be financed include: Leasehold interests or lease-purchase obligations (except as such may be financed indirectly via an EDA lease guaranty), mineral reserves, patents, organization expenses, preproduction costs, research and development expenses, goodwill, trade or brand names, franchises and licenses.

(c) Land included in the total project cost may include the following:

(1) Land acquisition costs, including reasonable real estate commission if paid by borrower.

(2) Cost of engineering fees, surveys, plats, title insurance, recording fees and legal fees incurred in connection with acquisition of land.

(3) Costs of nondepreciable grading and site improvements, as well as costs of necessary depreciable land improvements.

(4) Costs of soil tests and test borings.

(5) Preparation of plans and specifications.

(d) Buildings included in total project cost may include the following:

(1) Building acquisition costs, including reasonable real estate commission if paid by purchaser.

(2) Cost of constructing, altering, converting, rehabilitating, or enlarging buildings.

(3) Engineering, architectural, and legal fees paid in connection with the preparation of plans and specifications and the acquisition, construction, etc., of buildings and building equipment.

(4) Insurance during construction, including hazard insurance, performance, labor and material bonds.

(e) Machinery and equipment included in total cost may include the following:

(1) Machinery acquisition costs including cost of delivery and reasonable costs of installation.

(2) Engineering, architectural and legal fees paid in connection with machinery selection, design, acquisition and installation.

(3) Insurance during installation including hazard insurance, performance, labor and material bonds.

(f) In projects involving EDA direct fixed asset loans, land, buildings, machinery and equipment already owned by the applicant lien-free may be included in project costs and be treated as an in-kind equity injection and credited against the 10 percent equity required by the Act; provided they will be an integral part of the expanded operation. However, such in-kind equity credit will generally be limited to the lesser of (1) appraised fair market value, or (2) net book value (cost less accumulated depreciation) in the hands of the applicant, its principals, parent, subsidiaries, or affiliates; provided, however, that such credit as may be allowed for fixed assets owned by the applicant may not be used to provide the 5 percent required by the Act to come from a local government or nonprofit organization. In-kind injections of fixed assets owned by a local government or nonprofit organization may be credited toward the required local participation (State, political subdivisions or agencies thereof, and community or area organizations) to the extent of appraised fair market value. If the local government or nonprofit organization does not own fixed assets, its required 5 percent share must be put into the project in cash regardless of whether the community share is waived according to § 306.17 or not. The granting of in-kind equity credit for fixed assets does not apply to any form of EDA financial assistance other than the direct fixed asset loan program.

(g) Other eligible project costs may include:

(1) Interest on interim construction financing and other necessary costs of obtaining financing, with prior concurrence of EDA.

(2) Sales and use taxes incurred in the acquisition of project fixed assets.

(3) Other costs contributing directly to the value of project fixed assets, with prior concurrence of EDA, but not including the cost of feasibility studies.

(4) In otherwise eligible projects, costs associated with incorporating energy conserving features into facilities and production processes. Applicant, may, where able, demonstrate that incorporation of the proposed features for which assistance is being requested will result in the more efficient and cost-effective use of non-renewable energy sources and/or renewable sources of energy.

(h) Adequate contingency reserves are a necessary part of the provision for project costs in order to avoid the problem of incurring an overrun in total expenditures for the project and thereby forcing a renegotiation of the loan commitment. The contingency amount should be established according to the anticipated length of time for project construction, terms of contract, type of machinery and equipment, and technological and other developments which might be expected to increase cost.

(1) Contingency reserves for building construction and machinery and equipment should be established at a reasonable figure and justified by the applicant, depending upon the characteristics of the specific project.

(2) Construction bids or estimates and machinery and equipment quotes should allow for sufficient time and remain valid during the estimated period of project processing or until execution of firm contracts. These quotes should not be over sixty days old when the application is submitted to EDA.

(3) Contingency reserves for land must be considered in the event an option to purchase, earnest money agreement, or real estate contract provides for a renegotiation of terms prior to project funding. The applicant will be required to provide evidence of ability to acquire the project land and any

contractural arrangement therewith must be carefully reviewed in reference to establishment of a contingency for increased land costs above the project valuation at time of submission of the application.

(i) Allowable project costs for lease guaranty projects may include all reasonable rents, including attendant costs and taxes and other expenses as are customary with respect to comparable property.

(j) Applicants, where able, constructing new facilities or proposing expansion or rehabilitation of existing facilities and planning to use petroleum or natural gas for new heating, cooling or production processes may analyze alternatives for long-run cost savings. Applications for such project, may, where able, contain an architect/engineer's or operating engineer's certification that the proposed alternative is the most feasible and energy conserving available based on a life cycle cost analysis. The life cycle cost methodology employed may be consistent generally with the Department of Energy's Methodology and Procedures for Life Cycle Cost Analyses, as set forth in 10 CFR Part 436.

[39 FR 44961, Dec. 30, 1974, as amended at 47 FR 19983, May 10, 1982; 51 FR 1492, Jan. 14, 1986]

§ 306.13 Amount of assistance.

EDA financial assistance is limited to the following percentages of project cost:

(a) Direct fixed asset loan assistance shall never exceed 65 percent of the aggregate project cost. In the event other Federal aid is available and used to pay part of the project cost, such other Federal aid shall be subtracted from the aggregate project cost and the remainder shall be the aggregate cost for the purposes of business development fixed asset loan.

(b) Direct working capital loan assistance may be in an amount sufficient to include all of the applicant's allowable working capital needs.

(c) Lease guarantie shall never exceed 90 percent of the remaining rental payments required by the lease, provided no rental payments which accrue later than twenty-five years from the effective date of the guaranty shall be covered by the guaranty.

(d) No working capital guaranty shall at any time exceed 90 percent of the amount of the outstanding unpaid balance of the working capital loan by the private lending institution.

(e) No fixed asset loan guaranty shall at any time exceed 90 percent of the amount of the outstanding unpaid balance of the fixed asset loan by the private lending institution.

(f) No interest subsidy for a fixed asset loan guaranteed by EDA shall:

(1) Reduce the interest rate paid by the borrower by more than four percentage points; and

(2) Result in lowering the interest rate paid by the borrower below the greater of the rates described at §§ 305.25 and 306.11; and

(3) Be made for an amount of one (1) percent or less.

(Pub. L. 94-487, 90 Stat. 2331 (42 U.S.C. 3121 et seq))

[39 FR 44961, Dec. 30, 1974, as amended at 42 FR 12038, Mar. 2, 1977]

§ 306.14 Equity capital requirements.

The Act requires a minimum equity contribution only for direct fixed asset loan projects. However, all projects should be supported by equity capital to the following extent:

(a) Not less than 15 percent of the aggregate cost of a direct fixed asset loan project (which may include amounts required by § 306.15) shall be provided as equity capital or a standby loan.

(b) In projects involving EDA guaranties of fixed asset loans by a private lending institution, the guaranteed loan to applicant-beneficiary should not exceed 85 percent of the total cost of fixed assets to be purchased. The remaining 15 percent of the total project cost should be provided as equity capital. EDA's guaranty will be limited solely to the fixed asset loan and EDA required standby loan is considered a form of equity capital.

(c) An application for either an EDA guaranteed working capital loan or an EDA direct working capital loan will not ordinarily be approved until the applicant is in operation of its facilities. In projects involving EDA direct fixed asset loans, guaranteed fixed asset loans or lease guarantys, all project financing including applicant's equity must ordinarily be disbursed before the guaranteed working capital loan may be disbursed by the lender. Working capital loans will be restricted to working capital needs and cannot be diverted into fixed or other noncurrent assets. Applicants should have existing net working capital equal to not less than 15 percent of its total working capital needs. The remaining working capital requirements can then be met with either an EDA guaranteed working capital loan, or, where justified, with an EDA direct working capital loan. If the applicant is in a negative net working capital position or has less than 15 percent of its total working capital needs, it should bring its net working capital up to the required level by obtaining cash either from equity capital or a standby loan.

(d) In EDA lease or lease-purchase guaranty projects, the applicant should have expended an amount equal to not less than 15 percent of the value of the assets to be leased. Such expenditures shall be for either leasehold improvements or the types of fixed assets which can be allowable project costs under § 306.12. If applicant is not paying for needed leasehold improvements or fixed assets, its working capital should be augmented instead. Cash for the expenditures required by this subsection shall be obtained by applicant either from equity capital or a standby loan.

(e) Where funds are provided from a standby loan:

(1) Such loan shall be repayable in no shorter period of time and at no faster rate of amortization than the financial assistance provided by EDA and subordinate in rights of repayment to EDA.

(2) If such loan is secured, the security must be subordinate and inferior to the lien or liens securing the financial assistance provided by EDA.

§ 306.15 Required community share in direct fixed asset loan projects.

Not less than 5 percent of the aggregate cost of a direct fixed asset project shall be supplied by:

(a) State or any agency or instrumentality thereof;

(b) A political subdivision of a State or any agency or instrumentality thereof; or

(c) A community or area organization which is nongovernmental in character.

§ 306.16 Indian tribes.

Projects involving financial participation by Indian tribes are not required to meet the provisions of § 306.15. In such case, the 5 percent shall be supplied by the borrower as equity or by standby loan subject to the provision of § 306.14(e).

§ 306.17 Waiver of community share.

The Assistant Secretary may waive all or part of the 5 percent community share of the aggregate cost of a direct fixed asset loan project which is required by § 306.15 if he determines that all or part of the community share is not reasonably available to the project because of the economic distress of the area or for other good cause. The portion of the community share thus waived may be supplied by the applicant or by such other non-Federal sources as may be reasonably available to the project.

(a) In determining whether all or part of the community share is not reasonably available because of the economic distress of the area, the Assistant Secretary may consider the following factors:

(1) The extent of economic distress of the redevelopment area or district, as measured by unemployment, underemployment and income levels.

(2) The nature and extent of the funds reasonably available to comprise the community share, as made known by the community.

(3) The extent of local support for the project, as manifested by previous bona fide community efforts to assist it financially.

(4) The extent of previous bona fide, broadly based efforts to obtain local financial support for community economic development activities generally.

(b) In determining whether all or part of the community share of the aggregate project cost is not reasonably available for other good cause, the Assistant Secretary may consider, in addition to the factors listed above, the following situations as representing sufficient good cause for waiver:

(1) Where the financial assistance is requested to replace, rehabilitate, or expand the facilities of an industrial or commercial enterprise already existing in the locality, and local investors can show a need to conserve their funds in order to encourage the establishment of new industry which will broaden the economic base of the community; or

(2) Where the Assistant Secretary determines that a bona fide community fund raising drive either has been made or, if made, would be unsuccessful in raising the necessary funds for the project, and provided that the total prior community investment in projects already assisted by either the Area Redevelopment Administration, Small Business Administration or EDA is equal to or exceeds the following amounts:

(i) Redevelopment areas eligible for 50 percent public works grants—$10 per area resident;

(ii) Redevelopment areas eligible for 60 percent public works grants—$7 per area resident;

(iii) Redevelopment areas eligible for 70 percent public works grants—$5 per area resident; or

(iv) Redevelopment areas eligible for 80 percent public works grants—$3 per area resident.

§ 306.18 EDA security with respect to assets of the applicant.

EDA's financial assistance will usually be secured either directly or indirectly by liens or assignments of rights in assets of the applicant as follows:

(a) In order to encourage financial participation in a direct fixed asset loan project by other lenders and investors and to the extent necessary, the EDA loan may be repayable only after other loans made in connection with the project have been repaid in full. The lien position of EDA may be subordinate and made inferior to lien or liens securing other loans made in connection with the project.

(b) In projects involving EDA direct working capital loans, EDA will normally obtain collateral such as liens on inventories, receivables and/or fixed assets. Such liens may be subordinate only to existing liens of record.

(c) In projects involving EDA guaranteed loans, the lending institution ordinarily will be required to maintain a collateral position, to which EDA is subrogated, in the assets of the borrower and/or principals of the borrower such as by taking liens on inventories, receivables, and/or fixed assets. However, such liens if taken on fixed assets will not be placed by EDA subordination into a prior position to liens securing loans previously made or guaranteed under the ARA or EDA programs.

(d) In lease guaranty projects and other projects involving leased assets, EDA will require such collateral as is appropriate.

(e) Regardless of the type of EDA financial assistance extended, full personal guarantees of principals of applicant and/or related corporate guarantees by closely held corporate applicants or by the parent corporation of subsidiary corporate applicants, secured by collateral where deemed necessary, will be ordinarily required. Likewise, cross guarantees of related corporations will be required when deemed necessary to properly support the EDA financial assistance.

(1) Guarantees should be understood to provide not only additional collateral benefits, but also to provide the necessary personal involvement of the principals required to provide assurance of continuity of job opportunities provided by the project.

(2) Applicants will provide, in the case of personal guarantors, current (not over ninety days old at the time of filing) personal financial statements signed by both husband and wife and disclosing community and individual assets and indebtedness.

(f) In addition to the above types of security, EDA may also require security in the form of assignment of patents and licenses, the acquisition of hazard and other forms of insurance, and such other additional security as the Assistant Secretary determines is necessary to support EDA's exposure.

(g) Applications submitted by closely held corporations, partnerships, or proprietorships dependent for their continuing success on certain individuals will ordinarily be expected to provide and assign to EDA life insurance on these key men.

(h) In projects involving EDA guarantie either of loans by private lending institutions or of leases, if the lender or lessor secured by the EDA guaranty is also secured by a third party with respect to its exposure remaining above the EDA guaranteed portion, the guaranty agreement shall be modified to provide that any interest which the secured party would receive in the collateral taken for the financial assistance (and assigned to EDA upon redemption) shall not be subrogated to the third party's interest if the third party is a principal or equity shareholder in the applicant until all of the applicant's indebtedness to EDA is paid in full. The purpose of this provision is to ensure that those persons responsible through ownership for the operation of a project do not share in the proceeds of collateral until EDA recovers fully against all its exposures.

(i) Nothing contained in this section shall affect the subordinate lien position required for standby loans under § 306.14.

[39 FR 44961, Dec. 30, 1974; 40 FR 19443, May 5, 1975]

§ 306.19 Special considerations for projects located in economic development centers or in non-designated areas of economic development districts.

(a) Financial assistance approved for projects located in economic development centers shall be subject to the following restrictions and limitations:

(1) The project must be consistent with a currently approved OEDP for the economic development district.

(2) The amount of the business development loan approved must be reasonably related to the size, population, and economic needs of such district.

(3) The project must enhance the economic growth potential in such district or result in additional long-term employment opportunities commensurate with the amount of financial assistance extended.

(b) Financial assistance approved for projects located in non-designated areas in economic development districts shall be subject to the following restrictions and limitations:

(1) The project will be of substantial direct benefit to a redevelopment area within the district.

(2) The project must be consistent with a currently approved OEDP for the district.

(3) A finding by the State(s), or any agency, instrumentality, or local political subdivision thereof that the project is consistent with the district OEDP.

§ 306.20 Project financing.

Each project will be evaluated with the intent of obtaining a financing structure which demonstrates a minimum EDA participation in project financing to accomplish the project with maximum reliance on equity and junior lenders. Moreover, an EDA participation of $20,000 per job will ordinarily be the maximum acceptable for any particular project. In calculating the EDA participation per job, indirect jobs created in other parts of the local economy will not be considered. Seasonal jobs will be converted into full time job equivalents.

[50 FR 20746, May 20, 1985, and 51 FR 5513, Feb. 14, 1986]

§ 306.21 Financing information.

The following information shall be included with respect to all participants, other than EDA, in project financing:

(a) A written commitment or firm letter of intent from each participating lending institutions stating amount, interest rate, repayment terms, collateral and lien position it will require, or such other evidence as EDA may require to assure availability of funds. EDA requires that the proposed project financing upon which it bases a decision to lend remain firm, in order to obviate the lengthy reanalysis required by financing alterations after EDA acceptance of an application.

(b) A written commitment by the applicant to provide equity funds, stating both the source and actual availability of funds and/or assets to be injected, and the names of the principal shareholders or owners.

(c) Where applicable, a written commitment of the participating local development organization or public body, where applicable, stating amount of commitment, interest rate, repayment terms, collateral and lien position required.

(d) Where applicable a determination of the source and actual availability of local development organization funds or assets to be injected.

(e) A statement of any special conditions attaching to the financing arrangements proposed.

§ 306.22 Restrictive covenants on operations.

Conditions for the granting of EDA financial assistance for new ventures, closely held corporations and all marginally capitalized applicants shall include restrictive covenants similar to those required by private financial lending institutions except in cases in which modification or omission of one or more of them can be clearly shown not to jeopardize reasonable assurance of repayment of the financial assistance and the long-term continuity of the project's employment. Restrictive covenants for well-capitalized business expansion borrowers will be tailored to the financial status of individual companies.

§ 306.23 Indian reservation projects.

In view of the inherent problems of collateralizing financial assistance for projects to be located on Indian reservations due to the inability to obtain mortgages on such lands, project funding should afford EDA maximum collateral protection without undue hardship on the borrower. A lease agreement will enable EDA, in the event of a default, to reassign the right of occupancy to a third party and thereby improve the chances for continued operation of the project and the preservation of collateral value.

§ 306.24 Feasibility reports.

(a) All applications for financial assistance for new ventures involving a total project costing $1 million or more shall be accompanied by a technical and economic feasibility report from an acceptable independent consultant. New venture projects of less than $1 million must be accompanied by sufficient documentation to permit a determination by EDA of technical and economic feasibility.

(b) In projects which are expansions of a successful existing business or projects sponsored by a capable and financially sound parent organization, the requirement for a technical and economic feasibility report from an acceptable independent consultant may be waived by EDA. However, the prospective borrower shall provide all technical and economic information necessary for EDA to properly evaluate the application.

(c) An economic feasibility report from an acceptable independent consultant in connection with projects involving tourism and recreation facilities will be required if the cost of the proposed project exceeds $150,000. Evidence must be submitted that the proposed facility will provide services or have special attributes that tend to induce a net increase in tourist visits to the area and is part of a larger, area-wide program expected to attract tourists and provide jobs in the area. In cases where total project investment is less than the above minimums, sound judgment may require an independent feasibility study in light of the specific nature of the project.

Subpart B—Project Closing and Servicing

§ 306.31 Project closing.

EDA projects are closed and disbursed in accordance with detailed policies and procedures as set forth in the Office of Business Development Guide to Loan Closing. The major activities engaged in during this period are as follows:

(a) At the time an application for EDA financial assistance is approved by the Assistant Secretary, he also approves the primary document on which the financial assistance will be given; either a loan agreement or a guaranty agreement. The signed agreement is offered to the appropriate party for its acceptance, at which time a binding legal agreement between EDA and the applicant or guaranteed party takes effect. A preclosing conference will be arranged by the Regional Director, whenever the applicant requests one, to discuss the terms and conditions contained in the agreement and how these terms and conditions can be met.

(b) Immediately after acceptance, the Regional Office shall arrange with the applicant for the preparation, review, and signing of the promissory note, or lease, collateral documents, and other documents necessary for the financial assistance.

(c) Periodic inspections of construction of projects involving fixed assets will be made by the Regional Office to determine the satisfactory progress of the project and application of monies toward implementation of the project as set forth in the agreement. Particular attention will be paid to financial or management changes which might adversely affect the project. The Regional Office will, for example, determine whether there is: Conformance with plans and specifications, proper installation of equipment, sufficiency of funds for the completion of the project, substantiation of costs incurred, proper labor costs for compliance with the Davis-Bacon Act, and EDA approval of contract change orders.

(d) Disbursements of direct EDA loans will be made after a request by the borrower, to the Regional Office, on EDA Form ED-270, "Borrower's Certification of Current Status and Request for EDA Action." The disbursement will be based on costs incurred as certified to EDA at such time or times as the Regional Office shall require. Certifications as to project costs are made on EDA Form ED-268 "Status of Payments on Project Accounts." Certifications as to the status of project construction for projects involving fixed assets are made on EDA Form ED-269, "Business Loan Project Inspection and Certification of Project Acceptability." Requests for disbursement shall be supported by such documents as the Regional Office may require; for example, but not limited to, copies of unpaid invoices to be paid from disbursement; copies of fully paid invoices together with lien waivers, where appropriate; and copies of cancelled checks. The Regional Office may withhold 10 percent of all requested disbursements on all project costs except land costs. When the Regional Office determines that the status of the project is such as would place EDA's interest in jeopardy, the Regional Office may withhold a greater percentage after stating in writing to the borrower the basis for such decision. The borrower shall, on EDA Form ED-265, "Disbursement of Business Loan Funds," acknowledge receipt of each disbursement made by EDA.

(e) Requests by an applicant for a modification of the terms on which its EDA financial assistance has been extended shall be submitted to the Regional Director, supported by such documentation and facts as would justify the requests.

§ 306.32 Project servicing.

EDA personnel will make periodic visits to projects until such time as the financial assistance has been fully repaid. Such personnel will consult with employees and officers of the applicant and obtain such information as is necessary to determine the employment levels as well as the soundness of its financial condition and management. Requests by an applicant for a modification of the terms on which its EDA financial assistance has been extended shall be submitted to the Regional Director, supported by such documentation and facts as would justify the requests.

§ 306.33 Liquidation and administration of loans, guarantees and evidences of indebtedness.

In the event that the Assistant Secretary determines it is necessary or desirable to take actions to protect or further the interests of EDA in connection with loans or guarantees made or evidences of indebtedness purchased under the Act, the Assistant Secretary may:

(a) Assign or sell at public or private sale, or otherwise dispose of for cash or credit, in his discretion and upon such terms and conditions as he shall determine to be reasonable, any evidence of debt, contract, claim, personal or real property, or security assigned to or held by him in connection with financial assistance extended under the Act.

(b) Collect or compromise all obligations assigned to or held by him in connection with EDA financial assistance projects until such time as such obligations may be referred to the Attorney General for suit or collection.

(c) Take any and all other actions determined by him to be necessary or desirable in purchasing, servicing, compromising, modifying, liquidating, or otherwise administratively dealing with or realizing on loans or guaranties made or evidences of indebtedness purchased under the Act.

PART 307—TECHNICAL ASSISTANCE, RESEARCH, AND INFORMATION

Subpart A—Technical Assistance

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AUTHORITY: Sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); sec. 1—105, E.O. 12185; Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended).

SOURCE: 38 FR 2284, Jan. 23, 1973, unless otherwise noted.

Subpart A—Technical Assistance

§ 307.1 Purpose.

The purpose of this subpart is to set forth the requirements and procedures pursuant to which eligible applicants may receive technical assistance under section 301 (a), (b), (d), and (f) of the Act.

§ 307.2 Authority.

The Assistant Secretary may provide technical assistance, pursuant to title III of the Act, which would be useful in alleviating or preventing conditions of excessive unemployment or underemployment, to designated redevelopment areas and to other areas which he finds have substantial need for such assistance, including projects of regional or national scope.

§ 307.3 Projects.

(a) Technical assistance should serve the purpose of solving problems of economic growth, and may include:

(1) Pursuant to section 301(a) of the Act.

(i) Feasibility studies,

(ii) Identifying, planning, and programing of economic development projects,

(iii) Management and operational assistance,

(iv) Preliminary design planning and feasibility studies of development facilities, and

(v) Studies regarding energy conservation if such studies will examine specific energy problems which have broad applicability to economically distressed regions and communities.

(2) Pursuant to section 301(b) of the Act, grants to defray administrative expenses of organizations qualified to receive grants under section 301(a) of the Act. (See also Subpart B of this part.)

(3) Pursuant to section 301(d) of the Act, assistance, technical information, market research, or other forms of assistance or advice.

(4) Pursuant to section 301(f) of the Act, demonstration programs of special economic development.

(b) Technical assistance may be provided by the Assistant Secretary through:

(1) Members of this staff,

(2) Payment of funds to other departments or agencies of the Federal Government,

(3) Grants-in-aid to appropriate public or private nonprofit State, area, district, or local organizations, or

(4) Contracts with private individuals, partnerships, firms, corporations, or suitable institutions.

[38 FR 2284, Jan. 23, 1973, as amended at 45 FR 57963, Aug. 29, 1980]

§ 307.4 Location.

(a) Technical assistance will be provided in areas designated as redevelopment areas, however, a nondesignated area may also receive technical assistance, except for demonstration grants under section 301(f) of the Act, as an area of substantial need, if at least one of the following conditions is found to exist:

(1) The closing or the imminent shutdown of a major source of jobs is shown to have a highly adverse effect on the area.

(2) The area is so closely linked geographically or economically with a designated area as to substantially affect its economy.

(3) The economy problems of the area are so severe that they are leading toward substantial unemployment in the near future.

(4) The project is directed toward solving problems in a "hard-hit" part of a noneligible area, and that part appears to have persistent and substantial unemployment on the basis of readily available facts.

(5) Where an economic development district is formed under title IV of the Act, technical assistance may be rendered to that district or its economic development center.

(6) The project is one of national scope.

(b) Demonstration grants under section 301(f) of the Act may be provided only in redevelopment areas.

§ 307.5 Applicants.

(a) Applicants eligible for technical assistance, except as provided in paragraph (b) of this section, include:

(1) Local and area development organizations, for profit or nonprofit;

(2) State agencies;

(3) Federal agencies;

(4) Municipal bodies;

(5) Individuals;

(6) Partnerships;

(7) Firms;

(8) Corporations;

(9) Indian tribes;

(10) Other appropriate applicants.

(b) Only qualified nonprofit State, area, district, or local development organizations are eligible for technical assistance through grants. (See also Subpart B of this part.)

§ 307.6 Priority consideration.

Projects warranting priority consideration by EDA are those which:

(a) Can be expected to have a specific effect on employment or family income in a relatively short time.

(b) Offer assurances of effective follow-up.

(c) Benefit population groups with the greatest evidence of unemployment, underemployment, or low-family income.

(d) Are in designated areas.

(e) Would benefit additional areas.

(f) Contribute substantially to the overall objectives of the Act.

§ 307.7 Technical assistance through Federal personnel and contracts.

The Federal share of technical assistance provided by Federal personnel, or through contracts, may be 100 percent, but a maximum non-Federal contribution in cash or in kind is preferred. The EDA contribution for technical assistance through payment of funds to other departments or agencies of the Federal Government may be 100 percent of the project cost.

§ 307.8 Procedures for assistance by EDA direct contracting.

(a) Applicants for technical assistance for which EDA will directly contract for a service, may recommend potential contractors.

(b) EDA does not limit its choice to contractors suggested by the applicant and may invite contract proposals from competent, qualified individuals and organizations.

(c) Final selection of a contractor is made by the U.S. Department of Commerce according to Federal Procurement Regulations.

(d) The Government is not obligated in any way by any negotiations between the applicant (or others) and the suggested contractor.

§ 307.9 Contracting procedure.

(a) The Contracting Officer in the Department of Commerce is the sole legal party representing the Government in technical assistance contracts, including negotiation of financial terms and conditions, and award, administration, and termination of contracts.

(b) For technical assistance projects being carried out under contract, the Contracting Officer designates a Contracting Officer's Technical Representative (OTR), who is responsible for the preliminary acceptance of all the work required under the contract, including the preliminary approval of any and all reports, and such other specific responsibilities as are stipulated in various articles of the contract. The COTR is not authorized to make any commitments or otherwise obligate the Government, or authorize any changes which affect the contract price, terms, or conditions. Such changes are referred to the Contracting Officer through the COTR.

(c) Contracting is governed by Department of Commerce regulations and the Federal Procurement Regulations.

§ 307.10 Technical assistance through grants.

(a) The Federal share of technical assistance provided in the form of a grant must not exceed 75 percent of the total amount of the funds required.

(1) In determining the non-Federal share, EDA will give consideration to all contributions, both in cash and inkind, fairly evaluated including but not limited to space, equipment, and services.

(2) No Federal funds may be included in the 25-percent non-Federal share.

(b) The Assistant Secretary may waive all or part of the 25-percent non-Federal share of technical assistance grants, except for administrative expense grants under section 301(b), if he determines that the non-Federal share is not reasonably available because of the critical nature of the situation requiring technical assistance, or for other good cause.

(1) In determining whether a critical situation exists, the Assistant Secretary will consider one or more of the following criteria:

(i) The extent of the critical situation, as measured by unemployment, underemployment, and family income levels;

(ii) The nature and extent of the funds reasonably currently available to comprise the non-Federal share, as made known by the applicant and verified by the Economic Development Administration; or

(iii) The extent of local support for the project, as manifested by previous bona fide local efforts to assist it financially.

(2) In determining whether "other good cause" exists, the Assistant Secretary will consider one or more of the following factors in addition to those

sted in paragraph (b)(1) of this sec-
on:

(i) Where the technical assistance is
equested to replace, rehabilitate, or
xpand an activity already existing in
ne community, and the applicant can
now a need to conserve funds in order
o encourage the establishment of new
ctivities that will strengthen the eco-
omic base of the community; or

(ii) Where the Assistant Secretary
etermines that a bona fide local fund-
aising drive either has been made or,
f made, would be unsuccessful in rais-
ng the necessary funds for the proj-
ct.

307.11 Grant procedures.

Grant funds are disbursed directly
o the applicant, who is responsible for
mploying personnel, hiring consult-
nts, and planning and administering
he program. EDA, however, reserves
he right to approve plans for spend-
ng such funds, as well as the right to
pprove the qualifications of person-
nel, consultants, or contractors. Grant
offers are made on the terms specified
by the Assistant Secretary. Each grant
will designate a Grant Administrator
(GRA) who is responsible for the administration of the grant and liaison with the Grantee. The GRA is also responsible for evaluating the operation of the grant as executed by the Grantee, and for the preliminary approval of any and all reports and such other specific responsibilities as are stipulated in various articles of the grant.

§ 307.12 Procedural grant requirements.

(a) Grant agreements provide that the Government shall pay quarterly, or in certain circumstances more frequently, an amount to cover Federal-share funds estimated to be expended by the Grantee during the period following the payment.

(b) Contributions by the grantee, whether in cash or in kind, are expected to be paid out at the same general rate as "Federal share" expenditure. In any event, one-half of the Grantee's share of project cost will be available, incurred, or expended by the time one-half of the Federal share has been disbursed. Exceptions to this midpoint, pro rata requirement are approved in writing by the GRA.

(c) Technical assistance grants require that any interest earned on funds paid to the Grantee under the grant be reported and returned to the Government within 10 days after receipt of such interest, according to directions specified by the GRA. This requirement does not apply to States or State agencies, but it may apply to political subdivisions of States.

(d) Technical assistance grants require the Grantee to maintain separate records for the grant in a manner consistent with generally accepted accounting practices to safeguard the assets, insure internal control, and provide accurate and reliable accounting data and, unless otherwise authorized by the GRA, to establish a separate bank account for the funds provided under the grant. The requirement for a separate bank account does not apply to States or State agencies, however, such States or State agencies must establish a separate fund a count which identifies the application of funds provided through the grant.

(e) Any amendment to a grant must be approved in writing by EDA.

(f) Evidence is required that all persons authorized to handle funds under the grant, except elected officials, are bonded or secured for an appropriate amount.

§ 307.13 Limitations.

Technical assistance shall be provided on terms and conditions set by the Assistant Secretary, subject to the following restrictions and limitations, among others:

(a) Technical assistance funds may not be used to cover the costs of work already performed or of services already provided;

(b) No technical assistance project will be approved without satisfactory assurance to the Assistant Secretary that it is not being simultaneously considered for financial support by another organization or Federal agency;

(c) All applications not of national scope will be coordinated with appropriate Federal agencies, with interest in the project.

(d) Technical assistance for tourism development must be shown to be essential to a coordinated program of economic development in the area.

(e) The Overall Economic Development Program (OEDP) for designated areas and, whenever available, for economic development districts, will be considered in the evaluation of technical assistance applications.

(f) It is preferable that applications except those for projects of national scope be reviewed by the appropriate State, district, or area economic development organization before being submitted to EDA.

(g) To assure adequate and effective planning and economical use of funds where practicable, grants for administrative expenses under section 301(b) of the Act shall be used in conjunction with other available planning grants, such as urban planning grants authorized under the Housing Act of 1954, as amended, and highway planning and research grants authorized under the Federal-Aid Highway Act of 1962.

(h) The requirements of Part 309 of this chapter pertain to technical assistance.

§ 307.14 Repayment.

The Assistant Secretary may, in his discretion, require the repayment of technical assistance under section 301(a) of the Act and prescribe the terms and conditions of such repayment.

(a) Federal costs of technical assistance projects of substantial proprietary benefit to a private individual, corporation, or other business organization are expected to be repaid to the Federal Government through arrangements agreed upon between the Government and the recipient.

(b) Repayment shall be made on one-half the first $10,000 of project cost and 100 percent of the remaining project cost.

(c) Repayment shall be interest-free and unsecured.

(d) In the case of Federal agency business loan borrowers, repayment shall be made in monthly or quarterly payments in an amount approximating, but not in excess of, payments required on the loan. They will commence subsequent to the last payment of the loan.

(e) For all other applicants or beneficiaries, the terms of repayment shall not be inconsistent with the purpose and the use of the technical assistance.

(f) When the technical assistance beneficiary is a subsidiary, repayment shall, wherever possible, be required of the parent or controlling organization in addition to its subsidiary.

§ 307.15 Repayment not required.

Repayment will be waived under the following circumstances:

(a) Whenever repayment is likely to result in a loss of economic development benefits.

(b) Whenever any of the following conditions are intrinsic to the technical assistance:

(1) It has indirect benefit to the whole community;

(2) Its benefits the general business community or interest;

(3) It is already being funded, in substantial proportion, by the recipient; and

(4) It is for an applicant or beneficiary located in one of the most economically depressed areas in the country.

§ 307.16 Records and audit—grantees.

(a) All recipients of grants-in-aid under title III of the Act, other than a Department or agency of the Federal Government shall keep and preserve full written financial records accurately disclosing the amount and the disposition of any funds, whether in cash or in-kind, applied to the project, as shall adequately establish compliance with the Act (or the Area Redevelopment Act, where applicable) and the terms and conditions upon which such grants-in-aid were made.

(b) Where applicable, the grantee shall also keep project control records reflecting work progress and indicating its relationship to estimated costs and schedules.

(c) Such records shall be preserved until completion of the purpose or undertaking for which such funds were used, or until final disbursement has been made by EDA, whichever is later, and thereafter for a period of at least 3 years.

07.17 Records and audit—contractors.

a) The contractor or subcontractor connection with technical assistance research contracted for under title I of the Act or under the Area Rede- lopment Act, shall keep and pre- rve detailed project control records connection with the contract, re- ecting acquisitions, work progress, xpenditures and commitments and dicating their relationship to estab- shed costs and schedules.

(b) The contractor or subcontractor nall also keep such full written finan- al records as shall adequately estab- sh compliance with the requirements f the Act (and the Area Redevelop- ient Act, where applicable) and the erms and conditions of the contract r subcontract.

(c) Such records shall be preserved or at least 3 years after final payment nder the contract or subcontract.

Subpart B—Planning Grants and Economic Growth Study Grants

307.21 Purpose.

The purpose of this subpart is to set forth requirements and procedures by which eligible applicants in redevelopment areas or other areas of substantial need may apply for administrative expense grants for planning under section 301(b) of the Act, and for economic growth study under section 301(a) of the Act.

§ 307.22 Planning grant objectives.

(a) Planning grants for administrative expenses are given to enable eligible applicants to establish and carry out effective economic development programs at local and multijurisdictional levels, and to provide a basis for improved coordination and continuity of Federal, State, and local economic development activities. Planning grants should contribute to the establishment of a permanent economic development process, capable of meeting the planning, coordinating and implementation requirements of the area, district, or reservation.

(b) In order to further the objectives of Executive Order 12185 to conserve petroleum and natural gas, recipients may ensure that economic development planning processes assisted under this subpart may provide a means for addressing energy conservation concerns and principles.

[45 FR 57963, Aug. 29, 1980, as amended at 47 FR 19984, May 10, 1982; 51 FR 1492, Jan. 14, 1986]

§ 307.23 Economic growth study grant objectives.

Grants for economic growth studies under section 301(a) of the Act are given to evaluate the needs of and potentials for economic growth.

§ 307.24 Applicants.

Eligible applicants for planning grants and economic growth study grants include economic development districts, Indian organizations, local-area OEDP Committees or other development organizations, whose responsibilities for carrying out overall economic development programs are clearly established, and which are legally empowered to receive Federal funds for the above purposes. State and Federal agencies, business enterprises, individuals, and other applicants, where the purposes are to assist in the establishment of economic development program.

§ 307.25 Terms and conditions.

(a) Planning grants and economic growth study grants will be made on terms and conditions established by the Assistant Secretary, subject to the following limitations:

(1) The grants will not be made to cover the costs of work already performed or of services already provided.

(2) No grant will be extended without satisfactory assurances that no other organization or Federal agency is considering the same request for financial support to the project. However, planning grants may be used in conjunction with other planning grant programs to assure adequate, effective, coordinated, and economical use of funds.

(b) Planning grants are also subject to the following limitations:

(1) A planning grant shall not exceed 75 percent of the total amount of funds required for the project.

(i) No Federal funds may be included in the 25 percent non-Federal share.

(ii) In determining the amount of the non-Federal share, the Assistant Secretary will give consideration to contributions both in cash and in-kind, fairly evaluated, including but not limited to space, equipment, and services.

(2) Except as set forth in paragraph (b)(2)(i) of this section, no planning grants to economic development district organizations will be extended unless at least three-fourths of the counties within the district boundaries indicate, by resolution or other appropriate document, their commitment to support the activities of the district.

(i) Where a sufficient number of counties have withdrawn from the district to make compliance with this three-fourths requirement impossible or unreasonable, EDA may fund the continuing committed counties in the name of the original district organization if the Assistant Secretary determines that the remaining counties can meet the requirements for authorizing and designating EDDs, as set forth at §§ 303.1 and 303.2 of this chapter.

(3) Planning grants will be made to district and area planning organizations after compliance with organizational requirements in §§ 303.4 and 304.3 of this chapter.

(Sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); Dept. of Commerce Organization Order 10-4 (Sept. 30, 1975), as amended (40 FR 56702, as amended))

[38 FR 2284, Jan. 23, 1973, as amended at 45 FR 55704, Aug. 21, 1980]

§ 307.26 Financial requirements.

Recipients of planning grants and economic growth grants must comply with terms and conditions of the grants relating to financial requirements, including those relating to financial reports, accounting systems, internal controls, allowable project costs, retention of records, and audits, as EDA requires.

§ 307.27 Work program.

Recipients of planning grants and economic growth grants must comply with terms and conditions of the grants relating to specific work program requirements, including those relating to the preparation of initial OEDP's and annual OEDP progress reports.

§ 307.28 Continuation planning grants.

(a) Planning grants shall be provided annually to district and area grantees provided satisfactory performances by the grantees warrant continued EDA assistance.

(b) The Assistant Secretary will make annual determinations of satisfactory performance, and periodically conduct on-site performance appraisals.

(c) The appraisals will consider the following:

(1) Capabilities and quality of the economic development program.

(2) Ability of the grantee as an institution to advance economic development.

(3) Grantee compliance with terms and conditions of the grant offer.

(4) Grantee management practices.

(5) Grantee board participation and representation.

(6) Possible incorporation by the grantee of energy conservation concerns and principles into the economic development planning process.

(7) Implementation by grantee of recommendations of the preceding appraisal.

[38 FR 2284, Jan. 23, 1973, as amended at 45 FR 57963, Aug. 29, 1980; 47 FR 19984, May 10, 1982; 51 FR 1492, Jan. 14, 1986]

§ 307.29 Other requirements.

Provisions of Part 309 of this chapter are pertinent to planning grants and economic growth study grants.

Subpart C—Study, Training and Research Program

§ 307.41 General.

The purpose of this subpart is to explain assistance available under section 301(c) of the Act.

§ 307.42 Purpose.

To assist in the long-range accomplishment of the purposes of the Act EDA, in cooperation with other agencies having similar functions, under section 301(c) of the Act, conducts a

tinuing program of study, training,
research to:
) Assist in determining the causes
unemployment, underemployment,
erdevelopment, and chronic de-
ssion in various areas and regions
he Nation.
) Assist in the formulation and im-
nentation of national, State, and
l programs which will raise income
els and otherwise produce solutions
the problems resulting from these
ditions, and
) Assist in providing the personnel
ded to conduct such programs.

7.43 Program.

he program of study, training, and
earch is conducted:
) By EDA staff members
) Through payment of funds to
er departments or agencies of the
leral Government, or
) Through the employment of pri-
e individuals, partnerships, firms,
porations, or suitable institutions
1) Under contracts entered into for
h purposes, or
2) Through grants to such individ-
s, organizations, or institutions, or
3) Through conferences and similar
etings organized for such purposes.

07.44 Requirements.

he requirements set forth in Part
) of this chapter and such other re-
irements as the Assistant Secretary
ll determine necessary are perti-
nt to assistance under section 301(c)
the Act.

bpart D—State and Local Economic Planning Grants

OURCE: Rev. 5. 42 FR 51560, Sept. 29,
77, unless otherwise noted.

07.50 Purpose.

The purpose of this subpart is to set
rth regulations pursuant to which
gible applicants may apply for and
ceive direct grants for economic de-
lopment planning under section 302
the Act.

307.51 Objectives.

The primary objective of a planning
ant under section 302 of the Act is
strengthen the economic development planning capability of States, cities, and other eligible sub-State entities in order to ensure a more productive use of available resources in reducing the effect of economic problems, particularly those resulting in high unemployment and low incomes.

§ 307.52 Types of grants.

Pursuant to section 302 of the Act, the Assistant Secretary may award planning grants of the following types:

(a) Planning grants under section 302 (a) of the Act.

(1) *State planning grants.* (i) States shall undertake overall State economic development planning as part of a comprehensive planning process, to:

(A) Consider the provision of public works to stimulate and channel development, economic opportunities, and choices for individuals;

(B) Support sound land use;

(C) Enhance and protect the environment, including the conservation and preservation of open spaces and environmental quality;

(D) Provide public services;

(E) Balance physical and human resources through the management and control of physical development; and

(F) Enhance and support energy conservation principles, measures and activities.

(ii) This planning process shall be conducted cooperatively by the State, its political subdivisions, and the economic development districts located in whole or in part within the State. State plans resulting from the planning process shall be consistent to the fullest extent possible with local, redevelopment area, and economic development district plans. If a State plan is inconsistent with these other plans, it shall note the inconsistencies and justify them.

(2) *City and local planning grants.* (i) The planning by cities, other political subdivisions, and sub-State planning and development organizations (including redevelopment areas and economic development districts) shall be a continuous process involving public officials and private citizens in:

(A) Analyzing local economies;

(B) Defining development goals; and

(C) Formulating and implementing a development program.

(ii) This planning process shall include systematic efforts to reduce unemployment and increase incomes.

(b) Planning grants to economic development districts under section 302(b) of the Act.

(1) *Professional service grant.* The Assistant Secretary may make grants under this paragraph to economic development districts to enable them to provide professional and technical assistance, other than by grants, to local governments within the districts.

(2) *Grants to carry out review procedures required by the Intergovernmental Cooperation Act.* The Assistant Secretary may award grants to economic development districts to enable them to carry out review procedures required under Title IV of the Intergovernmental Cooperation Act of 1968.

To receive assistance under this paragraph, the economic development district must be designated by the State to conduct this review.

[Rev. 5, 42 FR 51560, Sept. 29, 1977, as amended at 45 FR 57963, Aug. 29, 1980]

§ 307.53 Eligible applicants.

(a) Eligible applicants under § 202(a) of the Act are:

(1) The governor of a State or an agency designated by him, and the chief executive officer of the District of Columbia, Puerto Rico, Virgin Islands, Guam, American Samoa, and Northern Mariana Islands.

(2) The chief officer of governing bodies of sub-State planning units, economic development districts, and redevelopment areas.

(3) The chief executive of cities and counties not located wholly within larger multi-county planning and development organizations receiving planning funds under section 301 of the Act.

(4) The chief executives of cities, counties, and redevelopment areas in multi-county organizations receiving funds under section 301 of the Act whose applications are endorsed by the Board of the multi-county organizations, and who demonstrate exceptional need for planning assistance, beyond that provided through th multi-county organizations.

(5) Eligible applicants cited unde this subpart, if the Assistant Secretar determines that planning assistance i necessary and other funds are no available to develop a plan required b Title IX of the Act.

(b) Eligible applicants under sectio 302(b) of the Act are the chief office of a designated economic developmen district or, where a grant is made pursuant to the joint funding simplification program, a State or other applicant eligible under that program provided that such grant will be use solely to assist economic developmen districts.

[38 FR 2284, Jan. 23, 1983, as amended at 4 FR 29136, June 24, 1983]

§ 307.54 Submission of applications.

An initial request for assistance shal be submitted to the Assistant Secretary. If the Assistant Secretary approves the initial request, the applicant may submit an application.

§ 307.55 Application requirements.

An application shall indicate th scope of the proposed planning activity, and provide evidence that th grantee will meet the following requirements:

(a) Where the grantee is a State, th grantee shall ensure:

(1) That the grant shall be administered by the governor or by an agenc he designates as responsible for th comprehensive economic developmen planning process.

(2) That an ongoing economic development process exists or will be established. This process shall be conducte cooperatively by the State, cities other political subdivisions and economic development organizations. I the proposed planning activity is intended to result in a State plan, th planning process shall provide for th generation and application of mutually acceptable planning and programming criteria for ensuring the maximum possible consistency between th State plan and other local and distric plans.

(3) That the results of the plannin process shall be incorporated in th

executive decisionmaking process in some formalized manner. The emphasis of the assistance, however, is on the planning process rather than the production of a plan.

(4) That the planning process shall be utilized in the recommendation of potential projects for funding under section 304 of the Act (13 CFR Part 312) in order to ensure that such projects are consistent with and contribute to Statewide development goals and strategies.

(5) That the planning process may be coordinated with energy conservation planning efforts, where able, to ensure that energy conservation principles, activities and measures are reflected in State economic development plans, programs and projects.

(b) Where the grantee is a sub-State planning district, the grantee shall ensure:

(1) That technical assistance provided by districts to local governments under section 302(b) of the Act shall increase their capabilities to participate in ongoing district planning programs.

(2) That districts funded under section 302(a) of the Act shall participate with the State in developing procedures for incorporating the goals of their ongoing economic development programs into the State's comprehensive planning process and for reflecting State goals and objectives in the district plans.

(c) Where the grantee is a city or county, the grantee shall ensure:

(1) That the grant shall be administered by the chief executive officer of a unit of government. This officer shall certify that he has authority to undertake broad planning activities to develop a continuous planning process and to implement the resulting programs and project.

(2) That planning shall involve both public officials and private citizens. If no procedure exists for this involvement, a special planning committee of public and private citizens broadly representative of the community shall be established in the office of the Mayor or county executive.

(3) That planning shall include a systematic effort to reduce unemployment and increase incomes.

(4) That a systematic approach shall be taken to analyze the local economy, define development goals, determine project opportunities, and formulate and implement a development program. OEDP or other guidelines for areas may be used in accomplishing this requirement.

(5) That, in undertaking the activities described in paragraphs (c)(3) and (c)(4) of this section, attention will be given to incorporating energy conservation concerns and principles into any economic development plans, programs, and projects. The economic development planning process may be coordinated with existing State and local energy conservation planning efforts.

(6) That, if a city or county is located in a larger economic development planning unit, activities funded with a planning grant shall be coordinated with the larger unit.

[Rev. 5, 42 FR 51560, Sept. 29, 1977, as amended at 45 FR 57963, Aug. 29, 1980; 47 FR 19984, May 10, 1982; 51 FR 1492, Jan. 14, 1986]

§ 307.56 Grant limitations.

Planning grants shall be made on terms established by the Assistant Secretary subject to the following limitations:

(a) Grants may not cover the costs of work already performed or of services already provided.

(b) Grants under section 302 may be provided in addition to assistance available under section 301(b) of the Act, but may not supplant that assistance.

(c) A planning grant may not exceed 75 percent of the total amount of funds required for the project.

(d) No Federal funds may be included in the 25 percent non-Federal share.

(e) In determining the amount of the non-Federal share, the Assistant Secretary shall give consideration to contributions both in cash and in-kind.

(f) This assistance shall be provided in accordance with the review procedure required under Title IV of the Intergovernmental Cooperation Act of 1968, as amended, and shall be used in conjunction with any other available

Federal planning assistance to further the comprehensive nature of this planning program, and to assure the efficient utilization of all available planning resources in the achievement of the objectives of the grant.

(g) Grantees will conform to EDA financial requirements including those requirements promulgated in Federal Management Circular (FMC) 74-7 (OMB Circular A-102).

(h) Grants may cover costs incurred for ensuring that energy conservation concerns are incorporated into the economic development planning process and resultant plans and programs as suggested by this subpart. Such costs will not be allowed if the grantee is receiving other Federal assistance to perform the above activity.

[Rev. 5, 42 FR 51560, Sept. 29, 1977, as amended at 47 FR 19984, May 10, 1982; 51 FR 1492, Jan. 14, 1986]

§ 307.57 Annual reports.

Grant recipients shall submit to the Assistant Secretary an annual report 60 days before the anniversary of their grants. The report shall include:

(a) *States.* (1) How requirements in § 307.55 have been met.

(2) A review and evaluation of the planning process supported, and the program activities undertaken, in relation to the specific goals and objectives described in the grant agreement.

(3) Policy, planning and development documents that have resulted from the planning activities assisted under this subpart.

(4) Certification to the Assistance Secretary that any plan prepared with assistance under this subpart considered all local, redevelopment area, and economic development district plans and

(i) Is consistent with these local, redevelopment area, and economic development district plans, or

(ii) Is inconsistent with them, with each inconsistency noted and justified.

(5) A description of how the planning process was used in the development of projects submitted for section 304 funding, and of how any such projects relate to the State's development strategy.

(6) For grants approved after October 1, 1980, certification regarding the manner in which the State incorporated energy conservation concerns into the activities of its planning process may be submitted.

(b) *Sub-State Planning Districts and Economic Development Districts*—(1) *§ 307.52(a)(2) grants.* (i) A description of the cooperative procedures established to include district information in the State planning process;

(ii) The planning information exchanged with the State and other districts, and an evaluation of the effect of this exchange on the district's ability to achieve its development goals.

(iii) A review and an evaluation of the planning process supported and program activities undertaken in relation to the specific goals and objectives described in the grant agreement.

(2) *§ 307.52(b) grants.* (i) For grants under § 307.52(b)(1), a description of the nature of the professional and technical assistance provided to local governments and a documentation of the results.

(ii) For grants under § 307.52(b)(2), a description of the A-95 review process funded under 302(b) of the Act and improvements made in relating it to the State planning process.

(c) *Cities and counties.* A review and an evaluation of the planning process supported and program activities undertaken in relation to the specific goals and objectives described in the grant agreement.

[Rev. 5, 42 FR 51560, Sept. 29, 1977, as amended at 47 FR 19984, May 10, 1982; 51 FR 1492, Jan. 14, 1986]

§ 307.58 Coordination.

The Secretary through the Assistant Secretary for Economic Development shall coordinate his activities in making grants under this subpart with the Title V Regional Commission and the Appalachian Regional Commission acting through the Federal and State Cochairman. Where a project is to be located wholly or partially within the boundaries of a Title V or the Appalachian region, or is of national or regional significance, the Federal and State Cochairman shall be furnished notice of project activity during the early phases of development and be kept advised of significant developments through the application review and final grant process.

§ 307.59 **Requirements.**

13 CFR Part 309, as amended, applies to planning grants under this subpart.

PART 308—SPECIAL ECONOMIC DEVELOPMENT AND ADJUSTMENT ASSISTANCE GRANTS

Subpart A—Requirements for Adjustment Grants Under Title IX

Sec.
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308.2 Definitions.
308.3 Applicants.
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Subpart C—Reports

308.50 Purpose.
308.51 Reports by eligible recipients.

AUTHORITY: Sec. 701, Pub. L. 89-136; 79 Stat. 570 (42 U.S.C. 3211); sec. 1-105, Department of Commerce Organization Order 10-4, as amended (40 FR 5670, as amended).

SOURCE: 39 FR 44968, Dec. 30, 1974, unless otherwise noted.

Subpart A—Requirements for Adjustment Grants under Title IX

§ 308.1 **Purpose.**

The purpose of this part is to set forth the requirements and procedures under which eligible recipients may receive grants under title IX of the Act.

§ 308.2 **Definitions.**

"*Eligible recipient*" as used in this part means a redevelopment area or economic development district established under title IV of this Act, an Indian tribe, the Governor of a State or a State agency designated by him, a city or other political subdivision of a State, a consortium of such political subdivisions, or a community development corporation as defined in section 613 of the Community Economic Development Act of 1981 (42 U.S.C. 9802).

[47 FR 5997, Feb. 10, 1982]

§ 308.3 **Applicants.**

Eligible recipients as defined in § 308.2 may apply for grants.

§ 308.4 **Award of adjustment grants.**

(a) The Assistant Secretary may make grants directly to an eligible recipient in an area for which the Assistant Secretary has made one of the following determinations.

(1) The area has experienced, or may reasonably be foreseen to be about to experience, a special economic development need. This need may arise from actual or threatened severe unemployment caused by economic dislocation, including unemployment caused by actions of the Federal Government or by compliance with Federal regulations, and from economic adjustment problems resulting from severe changes in economic conditions.

(2) The area has demonstrated longterm economic deterioration in its local economic base which contributes to the out-migration of economic activity and results in a decrease in employment opportunities. This situation may arise in one or more of the following ways:

(i) Widespread obsolescence of existing plant capacity and a lack of captial reinvestment in the area;

(ii) A continuing shift in consumption patterns producing a long-term decline in demand for the output of a major component of the area's economic base;

(iii) Inadequacy of an area's support facilities relative to the changing requirements of its major economic activities; and

(iv) Gradual depletion of a natural resource that has been a major component of the economic base of the area.

Grants will not be made which would have the purpose and effect of replacing the efforts of the economic adjustment program of the Department of Defense.

(3) The area has been selected for assistance under the Community Economic Development Act of 1981 (42 U.S.C. 9801, *et seq.*).

(b) The Assistant Secretary may approve a plan or planning application if he finds that it meets the requirements of § 308.6, and is satisfied that the projects included in the plan will be properly and efficiently administered, operated, or maintained. The approval by the Assistant Secretary of a plan or the making of an adjustment grant depends on a number of factors which may include the following:

(1) The level of appropriations for title IX.

(2) The severity of the economic adjustment problem.

Preference will be given to situations where at least 500 jobs, or a significant percent of jobs in the planning area have been threatened or affected.

(3) The responsiveness of the plan to severe unemployment and adjustment problems.

(4) The degree to which the plan is anticipatory and innovative to meet either an abrupt or erosive change in economic conditions.

(5) The capability of the eligible recipient to solve these problems.

(6) The relation between the title IX funds needed to implement the plan and the degree to which the plan would carry out the purpose of title IX.

(7) The level of unemployment of the area.

(8) The element of joint involvement of State and sub-state entities in the projects.

(c) Approval of a plan or planning application is a prerequisite for a grant, but approval of a plan does not obligate the Assistant Secretary to make a grant, nor does approval of a plan require funding at the full level requested.

(Pub. L. 94-487, 90 Stat. 2331 (42 U.S.C. 3121 et seq.; sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); Dept. of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended))

[39 FR 44968, Dec. 30, 1974, as amended a 43 FR 8253, Mar. 1, 1978; 47 FR 5998, Feb 10, 1982]

§ 308.5 Use of adjustment grants.

Grants shall be used to develop or carry out economic adjustment plans Disbursement of grants by eligible recipients shall be in accordance with plans or planning applications submitted under § 308.6, and the following requirements;

(a) Adjustment grants received by eligible recipients to develop plans shall be used to develop plans that meet the requirements of § 308.6(a). The purpose of these grants is to assist eligible recipients to qualify for title IX grants to carry out their plans. The awarding of a grant to develop a plan, however does not obligate the Assistant Secretary to make a subsequent grant to carry out the plan.

(b) An Adjustment grant received by an eligible recipient to carry out a plan may be used for one or more of the following purposes:

(1) Public facilities;

(2) Business Development;

(3) Planning;

(4) Research;

(5) Technical assistance;

(6) Public services;

(7) Rent supplements;

(8) Mortgage payment assistance;

(9) Relocation of businesses and individuals;

(10) Training;

(11) Unemployment compensation if the eligible recipient is a State; and

(12) Other assistance which demonstrably furthers the economic adjustment objectives of this part. The nature of this assistance will depend on the specific adjustment problem which is encountered. Any assistance granted under this paragraph is subject to normal statutory and regulatory restrictions.

(c) Adjustment grants to carry out a plan may be disbursed by eligible recipients through direct expenditures or through redistribution by them to public and private entities.

(1) Adjustment grants may be re-distributed in the form of grants to public and private non-profit entities only.

(2) Adjustment grants may be redistributed in the form of loans, loan guarantees, payments to reduce interest on guaranteed loans, or other appropriate assistance to public and private entities. Revolving loan fund grants are held in trust by the grantee as trustee for the benefit of borrowers and potential borrowers.

(Pub. L. 94-487, 90 Stat. 2331 (42 U.S.C. 3121 et seq.; sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211, Dept. of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended))

[39 FR 44968, Dec. 30, 1974, as amended at 43 FR 8253, Mar. 1, 1978; 45 FR 57963, Aug. 29, 1980; 53 FR 12511, Apr. 15, 1988]

§ 308.6 Planning requirement.

(a) Plans submitted by eligible recipients to the Assistant Secretary as a prerequisite for qualifying for a grant to carry out economic adjustment under title IX shall be consistent with planning goals and objectives which may have been developed under section 302 of the Act and shall contain the following:

(1) An identification of each economic development and adjustment need of the area for which assistance is sought. This should be an explanation of anticipated or existing economic problems and their impact on the eligible recipient.

(2) A description of each activity planned to meet each need. This explanation should include all activities that the eligible recipient has taken or plans to take regardless of whether funding is sought for them under title IX, and should indicate how each activity will contribute to the solution of economic problems.

(3) An explanation of the method of carrying out each planned activity. This should be an explanation for each activity of the amount of funds spent or needed, how each activity was or will be financed and brought into operation, and how each activity is or will be operated. The costs for each activity proposed to be funded under title IX should be broken down into construction or start up costs, and operating costs. A plan should clearly indicate how a grant under title IX, if made by the Assistant Secretary, would be used.

(4) A statement regarding the goals of each planned activity. For example, a public health project might provide employment for 100 people, treat 3,000 people a year, and induce new industry to move into an area.

(5) Assurances, if an eligible recipient intends to redistribute funds provided in a title IX grant through loans, that the proceeds from the repayment of the loans will be used for economic adjustment in a manner consistent with title IX. Assurances shall include a contractual agreement between EDA and the eligible recipient describing how repayment proceeds will be used.

(6) Evidence that the plan was developed in cooperation with regional commissions, States, political subdivisions, Indian tribes, and economic development organizations (including redevelopment areas and economic development districts) that, based on reasonable expectations, may be affected by implementation of the plan.

(7) An identification and analysis of the potential environmental impacts of the planned activities, including identifiable projects.

(8) Where appropriate, and where able, a completed energy efficiency analysis and life cycle cost analysis of the facilities for which EDA assistance is requested. The life cycle cost analysis may be generally consistent with the Department of Energy's Methodology and Procedures for Life Cycle Cost Analyses, as set forth in 10 CFR Part 436. The energy efficiency and analysis may include the following:

(i) The overall design of the facilities;

(ii) Special conservation measures to be utilized;

(iii) Fuel requirements for heating, cooling and production processes of the facilities;

(iv) Consideration given to the use of alternative and renewable energy sources for heating, cooling and production processes of the facilities; and

(v) BTU savings resulting from the design of the facilities compared to standard design criteria.

(b) Planning applications submitted by eligible recipients to the Assistant Secretary as a prerequisite for a grant to develop a plan required under subsection (a) shall contain the following:

(1) An identification of each economic development and adjustment need of the area for which assistance is sought. This should be a detailed explanation of anticipated or existing economic problems and their impact on the eligible recipient. The amount of detail, however, does not have to be as great as in paragraph (a)(1) of this section, and may be altered in the subsequent plan.

(2) A description of each activity planned to meet each need. This may be a very tentative identification of activities that the eligible recipient has taken or may take to solve economic problems. This description may be brief, and may be altered in the subsequent plan.

(c) In submitting plans for planning applications, the review procedures of Office of Management and Budget Circular A-95, as amended, shall be followed. Eligible recipients shall also provide copies of their plans or planning applications to the State, and if applicable, the Regional Commission in which the eligible recipient is located. States and Regional Commissions may comment on plans and planning applications, and the Assistant Secretary shall give due consideration to their comments prior to awarding an adjustment grant.

[39 FR 44968, Dec. 30, 1974, as amended at 47 FR 19984, May 10, 1982; 51 FR 1492, Jan. 14, 1986]

Subpart B—Specific Uses of Grants To Carry Out Economic Adjustment

§ 308.21 Purpose.

The purpose of this subpart is to elaborate upon the specific uses of grants to carry out economic adjustment § 308.5(b) listed how title IX grants may be used, and their subpart states requirements regarding each specific use.

§ 308.22 Definitions.

As used in this subpart, individual specific uses of grants have the following meanings.

(a) "Public facilities" means public works, and development facility projects of a nature that EDA assists
under title I and section 201 of the
Act.

(b) "Business development" mean
industrial and commercial projects of
a nature that EDA assists under sec-
tion 202 of the Act.

(c) "Planning, Research and Techn
cal Assistance" means technical assist
ance and related activities of a natur
that EDA undertakes under title III o
the Act.

(d) "Unemployment compensation
means unemployment compensatio
provided by the Secretary of Labor.

(e) "Public services" means a pr
gram established to provide temporar
employment in public service wher
such is a material part of the plan fo
economic adjustment assistance to th
area.

§ 308.23 Public facilities.

(a) An adjustment grant may
used for a public facility if the publ
facility has a reasonable relation
the purpose of title IX. Grants may
used for the acquisition or develo
ment of land and improvements
public works or development facili
usage; the acquisition, constructio
rehabilitation, alteration, expansio
or improvement of these facilities,
cluding related machinery and equ
ment; and the operation of these
cilities.

(b) Title IX grants may be used
part or all of the cost of the activit
described in this section.

[39 FR 44968, Dec. 30, 1974, as amended
40 FR 8325, Feb. 27, 1975]

§ 308.24 Business development.

(a) An adjustment grant may
used for business development p
poses if the business development
a reasonable relation to the purpose
Title IX. Business development gra
may be used:

(1) For the purchase, developm
and operation of land and facili
(including machinery and equipme
for industrial or commercial usage,
cluding the construction of new bu
ings;

(2) For the rehabilitation of ab
doned or unused buildings; and

(3) For the alteration, conversion or enlargement of existing buildings.

(b) Business development assistance may be made through any of the following activities:

(1) Purchasing evidences of indebtedness;

(2) Making fixed asset loans and working capital loans (which may include participation in loans);

(3) Guaranteeing fixed asset loans and working capital loans made to private borrowers by private lending institutions for any of the purposes of this subsection upon application by the lending institutions;

(4) Making payments to reduce interest on guaranteed loans; and

(5) Guaranteeing rental payments or leases for buildings and equipment.

(c) Title IX grants may be used to fund all or part of the cost of the activities described in this section.

(Pub. L. 94-487, 90 Stat. 2331 (42 U.S.C. 3121 et seq.; sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211, Dept/ of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended))

[43 FR 8253, Mar. 1, 1978]

§ 308.25 Planning, research and technical assistance.

(a) An adjustment grant may be used for planning, research and technical assistance if these activities have a reasonable relation to the purpose of title IX. Grants may be used for project planning; feasibility studies; management and operational assistance; administrative expenses; studies evaluating the needs of, and developing potentialities for, economic growth; and other related activities. This assistance is in addition to assistance available under title III of the Act.

(b) Title IX grants may be for part or all of the costs of the activities described in this section.

§ 308.26 Unemployment compensation.

(a) If the Assistant Secretary determines that payment of unemployment compensation will materially contribute to the economic adjustment of an area and such assistance is not otherwise available he may include as part of an adjustment grant an amount to be transferred to the Secretary of Labor for purposes of unemployment compensation in accordance with section 903(d) of the Act.

(b) Adjustment grant funds for unemployment compensation may be made available only to States. The eligible recipient, therefore, shall be a State, or obtain a prior agreement with the State to administer these funds.

§ 308.27 Relocation assistance.

(a) An adjustment grant may be used to assist in the relocation of individuals and businesses if such assistance has a reasonable relation to the purposes of Title IX and meets the criteria contained in paragraphs (b) and (c) of this section as appropriate.

(b) An adjustment grant may be used to assist in the relocation of unemployed workers and their families living with them only if both the following conditions are met:

(1) It is reasonably clear that alternative employment will not occur for such workers in their present locations during the process of long-range economic adjustment; and

(2) Relocation assistance funded under the Comprehensive Employment and Training Act of 1973 or the Trade Act of 1974 is not available to such workers.

(c) An adjustment grant may be used to assist in the relocation of businesses within the same area when it is reasonably clear that alternative opportunities for the operation of such businesses will not occur in their present locations during the process of long-range economic adjustment.

(1) For purposes of this paragraph, the words "same area" mean that geographic area which will allow employees of relocating businesses to retain their jobs.

(Pub. L. 94-487, 90 Stat. 2331 (42 U.S.C. 3121 et seq.); sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S C. 3211); Dept. of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended))

[43 FR 8253, Mar. 1, 1978]

§ 308.28 Other uses of adjustment assistance.

The Assistant Secretary may make adjustment grants available for public services, rent supplements, mortgage payment assistance, training, and for other appropriate uses if reasonably related to the purposes of Title IX and if useful to carry out a plan.

(Pub. L. 94-487, 90 Stat. 2331 (42 U.S.C. 3121 et seq.); sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); Dept. of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended))

[43 FR 8253, Mar. 1, 1978]

§ 308.29 General requirements.

(a) An eligible recipient shall agree that it will as a condition precedent to utilizing Title IX grant funds through direct expenditures, or through redistribution by grants, loans, loan guarantees or other appropriate assistance, determine with respect to the project or activity proposed to be assisted, and certify to the Assistant Secretary with supporting evidence that:

(1) Such project or activity complies with the requirements and conditions set forth in §§ 309.1, 309.3, 309.4, 309.5, 309.6, 309.9. 309.14, 309.15, 309.26 and Part 310 of these regulations, and section 702 of the Act, and that

(2) The recipients of the grant or loan or the beneficiaries of any guarantee (or "other parties" as defined in 15 CFR Subtitle A, Part 8) have executed assurances of compliance with Title VI of the Civil Rights Act of 1964, as amended; with Civil Rights Regulations of the Department of Commerce (15 CFR, Subtitle A, Part 8, as amended); and with section 112 of Pub. L. 92-65 relating to discrimination on the basis of sex.

(b) In addition to the certification required by paragraphs (a) (1) and (2) of this section, an eligible recipient shall provide sufficient environmental data as required by the Assistant Secretary to assist him in determining that the requirements of the National Environmental Policy Act and the National Historic Preservation Act have been met with respect to the project or activity proposed to be assisted. Compliance with these requirements shall be a condition precedent to utilizing title IX grant funds. When the Agency's environmental review process reveals conditions or safeguards which should be implemented when the adjustment grant is to be undertaken in order to protect or enhance enviro
mental quality, or minimize adve
environmental impacts, such con
tions or safeguards shall be set fo
in the Agency's environmental revi
record, shall be specified as requi
ments of the adjustment grant and
any applicable third party contract
specting the grant, and shall be imp
mented or caused to be implemen
by the grantee.

(c) The retention and custodial
quirements for records specified
Federal Management Circular 7
(Office of Management and Bud
Circular A-102), as amended, shall
followed.

(d) After making an adjustm
grant, the grantee must provide ass
ance satisfactory to the Secretary
garding each specific project to
funded under title IX that s
project is consistent with title IX
the general purposes of the Act.

(Pub. L. 94-487, 90 Stat. 2331 (42 U.S.C.
et seq.); sec. 701, Pub. L. 89-136, 79 Stat.
(42 U.S.C. 3211); Dept. of Commerce Org
zation Order 10-4, as amended (40
56702, as amended))

[39 FR 44968, Dec. 30, 1974, as amende
43 FR 3350, Jan. 25, 1978. Redesignate
43 FR 8253, Mar. 1, 1978]

Subpart C—Reports

§ 308.50 Purpose.

The purpose of this subpart is to
scribe required reports.

§ 308.51 Reports by eligible recipients.

An eligible recipient which rece
title IX assistance directly from
Assistant Secretary shall make a c
plete report each year that the as
ance continues and for one year th
after to the Assistant Secretary.
report shall include:

(a) Whether planned activities
completed and operational, and, if
completed, when it is anticipated t
will be completed;

(b) The costs incurred for each a
ity partially completed, and comp
ed;

(c) The operational costs of activi
if operational;

pages tightly bo

(d) The degree to which activities have achieved their planned goals as described in the original plan;

(e) A general evaluation of the effectiveness of the title IX assistance provided to the recipient; and

(f) The compliance status and effectiveness of any conditions or safeguards specified as requirements of the adjustment grant.

PART 309—GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE

Sec.

309.0 Purpose.
309.1 Certification as to waste treatment.
309.2 Unfair competition.
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309.4 Electric and gas facilities.
309.5 Administration, operation, and maintenance of projects.
309.6 Labor standards—construction of projects.
309.7 Employment of expediters or administrative employees; compensation of persons engaged by or on behalf of applicants.
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309.11 Special-purpose units of local government.
309.12 Preapproval construction.
309.13 EDA assistance additional to other Federal assistance.
309.14 Design, construction, and alteration of buildings to accommodate the physically handicapped.
309.15 Flood hazard.
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309.18 Environmental requirements.
309.19 Relocation assistance and land acquisition policies.
309.20 Nondiscrimination.
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309.22 Forms.
309.23 Where to file; timeliness of filing.
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309.25 Procedures in disaster areas.
309.26 Project modification.
309.27 Land use near Federal airfields.
309.28 Grantee procurement standards.
309.29 Use of lead-based paints on residential structures.

AUTHORITY: Sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); Sec. 1-105, DOC Organization Order 10-4, as amended (40 FR 56702, as amended).

SOURCE: 38 FR 2287, Jan. 23, 1973, unless otherwise noted.

§ 309.0 Purpose.

This part sets forth the requirements relating to financial assistance rendered under the Act, as imposed by the terms of the Act and the requirements of other statutes, Executive orders, and regulations which have relevance to the activities authorized under the Act. The requirements are in addition to other requirements set forth in the Act and this chapter.

§ 309.1 Certification as to waste treatment.

No financial assistance, through grants, loans, guarantees, or otherwise, will be made under the Act to be used directly or indirectly for sewer or other waste disposal facilities unless the Environmental Protection Agency certifies to EDA that any waste material carried by such facilities will be adequately treated before it is discharged into any public waterway so as to meet applicable Federal, State, interstate, or local water quality standards.

§ 309.2 Unfair competition.

No financial assistance under the Act shall be extended to any project which will directly increase the production of goods, materials, or commodities, or the availability of services or facilities, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, as required by section 702 of the Act.

(a) *Definitions.* As used in this section:

"*Demand*" means the amount of the product or service which can reasonably be expected to be purchased for use in the market area to be served by the project or its intended principal industrial or commercial beneficiary.

"*Capacity*" means that quantity of production or supply of services which could reasonably be expected to be produced or supplied over a sustained period of time by existing competitive enterprises for use within the market area under working schedules historically customary for the industry.

"*Efficient capacity*" means that part of the capacity which is produced or supplied by existing competitive enterprises employing well-designed structures, equipment, machinery, and designs and techniques that are comparable to current practices.

"*Existing competitive enterprise*" means an established facility which either produces the same product or supplies the same service to the market area or a significant part thereof.

"*Financial assistance*" means any grant, loan, guarantee, or purchase of evidence of indebtedness by EDA pursuant to the authority of the Act, and any contract, purchase order, task order or work order in an amount in excess of $25,000 which is directed toward an increase in the productive capacity for goods or services by a specific enterprise either existing or prospective.

(b) *Determinations.* Determinations of whether approval of a project will violate this section shall in all cases (except those described in paragraph (e) of this section) be based on a "702 Study."

(c) *Procedures for preparing a "702 Study" for business loan and public works projects.* Where financial assistance under the Act is requested for a Public Works or Business Loan project the following procedures shall be followed to the extent necessary to provide the Agency with sufficient information to prepare a "702 Study".

(1) The applicant shall submit, in connection with the project for which financial assistance is being sought, all of the information reasonably available concerning the following:

(i) Proposed product(s) or service(s).

(ii) Project capacity.

(iii) Market area where product or service is to be sold.

(iv) Supply of product or service currently available in market area and sources thereof.

(v) Percent of market expected to be taken by project.

(2) EDA shall verify to the extent possible and evaluate the information submitted by the applicant.

(d) *Technical assistance.* Whenever a Technical Assistance grant, contract, or task order in excess of $25,000 is requested for a project which is directed toward an increase in the productive capacity for goods or services by a specific enterprise, either existing or prospective, a "702 Study" will be required. The procedures for preparing such "702 Study" set forth in paragraph (c) of this section shall be followed to the extent necessary to provide the Agency with sufficient information.

(e) *Projects not requiring a "702 Study".* Financial assistance under the Act may be provided to a project without a "702 Study" where EDA determines such project meets one of the following criteria:

(1) The project to be assisted is not designed primarily or essentially to benefit a particular firm or industry, but is designed primarily for the benefit of the community or area as a whole or for general industrial or commercial purposes. When a single firm or industry will utilize 50 percent or more of an EDA financed facility, that firm or industry is considered a "primary beneficiary".

(2) The extension of financial assistance will not result in a significant increase in production or services that have heretofore been available in the area, because its purpose is to:

(i) Replace or restore capacity recently destroyed by flood, fire, wind, or other disaster; or

(ii) Assure the retention of capacity and employment, or

(iii) Replace, rebuild or modernize, within the same labor market area, facilities displaced by an official action, including but not limited to actions resulting from public construction projects, land use condemnation procedures, and/or requirements under environmental control ordinances or laws. The original owners of the affected facilities will be given first opportunity for EDA assistance. If, after a reasonable period of time the original owners fail to take advantage of these opportunities, other producers within the area may qualify for assistance to replace the affected facilities; or

(iv) Assure the completion of a project previously assisted by EDA or the Area Redevelopment Administration, where the additional assistance is required solely because of revised project cost estimates and not because of added productive capacity; or

(3) That the grant is of one of the following categories which have been found not to result in an increase in the productive capacity for goods or services by a specific enterprise, either existing or potential.

(i) Research or study grants designed to: determine the causes of national, regional, or sectoral unemployment, underemployment, underdevelopment or chronic depression, assist in the formulation of programs to address such problems, or provide the personnel needed to conduct such programs;

(ii) Planning grants issued to State or local governments or to regional or area organizations for administrative expenses of a planning process or for the preparation of economic development plans or programs;

(iii) Technical assistance grants which are not designed to assist a specific firm or group of firms and/or which will not lead directly to capacity development or expansion in the production of goods or services to be offered for sale in competition with existing producers not benefiting from the grant.

(f) *Amendments.* In the case of amendments to the terms or conditions of an existing loan or grant, commitments will not require a "702 Study" unless such amendments will result in an increase in the capacity of the project or a change in the product or service to be produced.

[38 FR 2287, Jan. 23, 1973, as amended at 51 FR 16293, May 2, 1986; 53 FR 50208, Dec. 14, 1988]

§ 309.3 Nonrelocation.

EDA financial assistance will not be used directly or indirectly to assist employers who transfer one or more jobs from one commuting area to another. A commuting area is that area defined by the distance people travel to work in the locality of the project receiving EDA financial assistance. This restriction will apply to financial assistance in the form of grants and loans, as defined in this provision, for a period of forty-eight (48) months from the date of approval by EDA of financial assistance. In the case of loans guaranteed by EDA, the restriction will apply from the date on which EDA authorizes a lender to apply for an EDA guarantee until one year after the date of the final disbursement by the lender of the guaranteed loan. This restriction applies to the transfer of jobs, not of personnel. Every recipient of financial assistance has an affirmative duty to comply with the requirements of this regulation and a duty to inform EDA of every instance in which an employer transfers jobs from one area to another in connection with the EDA financial assistance during the periods defined herein. In the case of loans guaranteed by EDA, the lender, as well as the borrower, must inform EDA of such instances of job transfers.

(a) As used in this section, "Financial assistance" means loans, loan guarantees, and grants funded pursuant to Titles I, IV, IX, and section 301(f) of Title III of PWEDA for construction, rehabilitation or repair of real estate, and grants under Title IX for any purpose defined in this subsection.

(b) Employers prohibited from transferring jobs will include:

(1) Grantees;

(2) Businesses within the project boundaries of grants as described in the grant agreement; in the case of grants to fund area-wide utility systems, businesses which use greater than ten percent (10%) of the total capacity of the utility system as improved by the EDA grant;

(3) Borrowers;

(4) Lessees of borrowers or grantees; or

(5) Affiliates, subsidiaries, or other entities under direct, indirect, or common control of the foregoing.

(c) Transferred jobs will include those transferred by:

(1) Closing an operation in one commuting area and opening a new operation in another commuting area, or

(2) Increasing the number of jobs of an already existing employer at a location outside of the commuting area of its existing operations and reducing the number of same or similar jobs at any location where the employer conducts operations.

(d) EDA financial assistance is not prohibited for the expansion of an employer through the creation of a new branch, affiliate, or subsidiary which will not result in a decrease in jobs in any area where such employer conducts business operations. However, EDA will not extend and will terminate previously approved financial assistance in accordance with this provision, if the Assistant Secretary has reason to believe that such branch, affiliate, or subsidiary is being created with the intention of reducing the number of same or similar jobs of the employer in any area where it conducts operations.

(e) Should an employer locate in a facility or project area to be benefited by EDA financial assistance prior to the date of EDA's approval of that financial assistance, for the purpose of avoiding the restrictions of this rule, EDA will terminate the financial assistance and the recipient will be required to repay the full amount of the EDA financial assistance, plus interest.

(f) Grants made under Titles I, II, and IX and section 301(f) of Title III of the Act, which were approved from November 13, 1985, through September 15, 1986, are governed by EDA's interim final rule on nonrelocation published in the FEDERAL REGISTER on November 13, 1985 (50 FR 46749). All other grants approved prior to September 15, 1986, will be governed by the rule as revised on that date, provided however, that any violation of the nonrelocation rule in effect prior to that date, which occurred prior to that date, will not be waived.

(g) Retail stores which open new outlets in EDA funded facilities, are exempt from this requirement provided:

(1) The retail store is not a direct recipient of EDA financial assistance;

(2) The retail store is not engaged in a pattern of operations which would result in relocating a substantial portion of its operations from one multistate region to another; and

(3) The new outlet opening will not result in a significant reduction of employment in the retail store's entire operation.

(h) The Assistant Secretary may require detailed information concerning the background, plans, and activities of the applicant, or of any related employer with which the applicant or its principals has any contract or arrangement or proposes to make any contract or arrangement based on benefits expected from the proposed EDA financial assistance, or of any employer which is known as or is intended by the applicant to be a beneficiary of the financial assistance, or which is to be located within the project boundaries.

(i) Relocation assistance made under the authority of Title IX of the Act and meeting the requirements of § 308.27 is not prohibited by this section.

(j) These requirements apply to all operations of the borrower for EDA loans and guarantees.

(k) Each applicant for financial assistance will submit its certification of compliance with these nonrelocation requirements as part of its application. In the case of: (1) Grants for construction, receipt by the grantee of a properly executed certification of nonrelocation from all employers locating within the project boundaries; or (2) Loan guarantees, receipt by the lender of a properly executed certification of nonrelocation from the borrower at the time of each disbursement, will evidence compliance with these requirements, unless the Assistant Secretary has reason to believe that the grantee or lender did not act in good faith.

(l) These nonrelocation requirements can be waived for grants with the written consent of the Assistant Secretary.

(m) When EDA determines that these requirements have been violated, EDA will terminate for cause the financial assistance made available by EDA. The recipient will be obligated to repay to EDA the full amount of that financial assistance, plus interest from the date determined by EDA upon which the violation occurred, at the U.S. Treasury Current Value of Funds Rate.

(Pub. L. 94-487, 90 Stat. 2331 (42 U.S.C. 312 et seq.); sec. 701, Pub. L. 89-136, 79 Stat. 57

(42 U.S.C. 3211); Dept. of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended))

[38 FR 2287, Jan. 23, 1973, as amended at 51 FR 32629, Sept. 15, 1986; 52 FR 21932, June 10, 1987]

§ 309.4 Electric and gas facilities.

(a) Except for those types of facilities listed in paragraph (a)(2) of this section, no financial assistance authorized under the Act will be used to finance the cost of facilities for the generation, transmission, or distribution of electrical energy, regardless of whether such activities constitute the primary or secondary functions of the facility which is to receive financial assistance under the Act, and regardless of whether such activities are solely for on-site consumption.

(1) Definitions: As used in this section.

"*Generation of electricity*" means the conversion of energy by any method into electrical energy.

"*Transmission of electricity*" means the transfer of electrical energy for wholesale purposes, by circuit or circuits, regardless of voltage.

"*Distribution of electricity*" means the transfer of electrical energy by circuit or circuits, regardless of voltage, from the transmission system to metering stations for use by consumers.

(2) The following electrical energy facilities are not barred from receiving financial assistance under the Act:

(i) Facilities specifically authorized by Congress

(ii) Local facilities serving industrial parks or industrial commercial areas of communities which have lost or are threatened with a loss of jobs due to the interruption or curtailment, or threat thereof, of electrical energy supplies, or which could create new jobs through an assured supply of electrical energy, provided the following requirements are met.

(A) The Assistant Secretary determines that project financing is not available from private lenders or other Federal agencies on terms which, in the opinion of the Assistant Secretary, would permit completion and operation of the project.

(B) The Federal or State regulatory body regulating such energy facility makes one of the following determinations:

(*1*) The facility to be financed would not compete with existing public utilities providing energy to the public at rates or charges subject to control by the regulatory body; or

(*2*) The facility to be financed would compete with existing public utilities, but the area to be served by the facility needs increased supplies of electrical energy and existing public utilities are not able to meet this demand through existing facilities or are not willing to meet this demand through expansion.

(iii) An internal electrical system consisting of the electrical installation on the consumer's side of the distribution system metering station, providing it meets the requirements set forth below. The internal electric system may include conductors, conduits, structures, switchgear, transformers, and other appurtenances. In order for an internal electrical system to qualify as an exception, it must meet the following requirements:

(A) Ownership of the system must lie with the owners of the facility, or portion thereof, served by the internal electrical system, and

(B) Electricity carried by the internal electrical system may not be resold.

(iv) Standby electrical generating equipment, *Provided:*

(A) Such equipment is neither of sufficient capacity to, nor intended to, provide electricity for the regular sustained operation of the facility which is to receive financial assistance under the Act, and

(B) Significant damage or harm could result from an electric power failure in the absence of such standby agreement.

(b) Except for those types of facilities listed in paragraph (b)(2) of this section, no financial assistance authorized under the Act will be used to finance the cost of facilities for the production or transmission of gas (natural, manufactured, or mixed), regardless of whether such activities constitute the primary or secondary function of the facility which is to receive financial assistance under the Act, and regardless of whether such activities are solely for on-site consumption.

(1) Definitions: As used in this section:

"*Production of gas*" means the procuring, gathering, and treating of gaseous raw material by the necessary operation and plant, in such a way as to prepare it for transmission.

"*Transmission of gas*" means the moving of gas by the necessary operation and plant to metering station from which it is distributed to consumers.

"*Distribution of gas*" means the moving of gas by the necessary operation and plant from the metering station of the transmission system to consumers within a particular locality and also may include the facilities for local storage, regulation and consumer metering.

(2) The following gas facilities are not barred from receiving financial assistance under the Act:

(i) Facilities specifically authorized by Congress;

(ii) Local facilities serving industrial parks or industrial or commercial areas of communities which have lost or are threatened with a loss of jobs due to the interruption or curtailment, or threat thereof, of gas energy supplies or which could create new jobs through an assured supply of gas energy: *Provided*, The following requirements are met.

(A) The Assistant Secretary determines that project financing is not available from private lenders or other Federal agencies on terms which, in the opinion of the Assistant Secretary, would permit completion and operation of the project.

(B) The Federal or State regulatory body regulating such energy facility makes one of the following determinations:

(*1*) The facility to be financed would not compete with existing public utilities providing energy to the public at rates or charges subject to control by the regulatory body; or

(*2*) The facility to be financed would compete with existing public utilities, but the area to be served by the facility needs increased supplies of gas energy and existing public utilities are not able to meet this demand through existing facilities or are not willing to meet this demand through expansion.

(iii) Facilities for the distribution of gas as described in paragraph (b)(1) of this section.

(c) Not more than seven million dollars of the funds appropriated to carry out titles I and II of the Act may be expended annually for projects described in paragraphs (a)(2) and (b)(2) of this section.

(Pub. L. 94-487, 90 Stat. 2331 (42 U.S.C. 3121 et seq.); Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended))

[38 FR 2287, Jan. 23, 1973, as amended at 42 FR 5599, Jan. 28, 1977; 46 FR 9026, Jan. 28, 1981]

§ 309.5 Administration, operation, and maintenance of projects.

No financial assistance under the Act will be approved unless EDA is satisfied that the project for which financial assistance is granted will be properly and efficiently administered, operated, and maintained.

§ 309.6 Labor standards—construction of projects.

The construction of facilities financed in whole or in part by loans or grants made under the Act (hereinafter in this section called "projects") are subject to the following statutes and regulations:

(a) Applicants for assistance must assure EDA that all laborers and mechanics employed by contractors or subcontractors in the construction of projects shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act as amended (40 U.S.C. 276a-276a-5). The construction work on projects will be subject to the regulations issued by the Secretary of Labor pursuant to the Davis-Bacon Act (29 CFR Part 5).

(b) Contractors and subcontractors engaged in construction of projects are subject to the provisions of the Copeland Act, as amended (40 U.S.C. 276c) and the regulations issued thereunder by the Secretary of Labor (29 CFR Parts 3 and 5).

(c) Contractors and subcontractors engaged in construction of projects are subject to the provisions of the Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. 327-333) and the regulations issued thereunder by the Secretary of Labor (29 CFR Part 5).

[38 FR 2287, Jan. 23, 1973, as amended at 43 FR 54924, Nov. 21, 1978; 43 FR 56220, Dec. 1, 1978]

§ 309.7 Employment of expediters or administrative employees; compensation of persons engaged by or on behalf of applicants.

(a) No application or plan for financial assistance for any business enterprise shall be approved by EDA under sections 101, 201, 202 or 403 of the Act unless the applicant:

(1) Certifies to EDA the names of any attorneys, agents, and other persons engaged by or on behalf of such applicant for the purpose of expediting applications made to EDA for assistance of any sort, under this Act, and the fees paid or to be paid to any such person, and

(2) Executes an agreement to refrain from employing, tendering any office or employment to, or retaining for professional services, any person who, on the date such assistance or any part thereof was rendered, or within 1 year prior thereto, shall have served as an officer, attorney, agent, or employee, occupying a position or engaging in activities which EDA shall have determined involves discretion with respect to the granting of assistance under this Act. Such agreement will be binding on the applicant for a period of 2 years after EDA financial assistance is rendered.

(b) Definitions as used in this section: The term "Positions involving discretion" means the Assistant Secretary; Deputy Assistant Secretary; Deputy Assistant Secretary for Operations; Deputy Assistant Secretary for Finance; Office Directors and Division Chiefs in the Offices of: Public Works; Special Servicing; Liquidation; Loan Management; Financial Assistance; Planning, Technical Assistance, Research, and Evaluation; and Economic Adjustment. They also include Regional Directors with respect to projects located in their regions. Clerical employees do not occupy positions involving discretion with respect to the granting of assistance under the Act. The discretionary nature of positions and activities of other employees shall be determined by the Assistant Secretary at such times as the employee terminates his/her employment.

(c) EDA will participate in such costs of facilities receiving financial assistance under the Act as are deemed to be reasonable as fees or compensation for services actually rendered by persons engaged by or on behalf of the EDA applicant for the purpose of rendering professional or other services necessary, as determined by EDA, in connection with such facilities or with the extension of financial assistance by EDA. Provided that, no funds appropriated or otherwise made available under Pub. L. 99-180, December 13, 1985, and Pub. L. 99-500, October 18, 1986, may be used directly or indirectly for attorneys' or consultants' fees in connection with securing grants and contracts made by EDA, such as preparing applications for EDA financial assistance; however; attorneys' and consultants' fees for meeting grant requirements, such as conducting a title search or preparing plans and specifications, could be eligible project costs and paid for out of funds appropriated or otherwise made available under Pub. L. 99-180 and Pub. L. 99-500. No fee or compensation will be allowed if it appears that the person charging such fee or compensation has:

(1) Induced or attempted to induce by gifts, or offer thereof, promises, bribes or otherwise, any officer or employee of EDA to take action with respect to any matter before EDA.

(2) Made representations that imply that the service for which the fee is charged, or any portion thereof, is or will be of a political, influential, or similar nature.

(3) Charged or proposed to charge any fee contingent upon the granting of any assistance to the applicant.

(4) Shown a course of conduct which indicates that the person might submit false information or evidence to EDA or engage in corrupt practices

before EDA in connection with matters on which he is employed.

(d) The requirements of this section will apply to applications filed with EDA after April 30, 1971. The requirements of paragraphs (a) and (b) of this section, will also apply to applications filed with EDA prior to April 30, 1971, except that for the purpose of such applications "positions involving discretion" means the Assistant Secretary, Deputy Assistant Secretaries for Economic Development, Policy Coordination, Economic Development Planning and Economic Development Operations; Office Directors, Deputy Directors, and Division Chiefs in the Office of Public Works, Business Development, and Technical Assistance; and Director and Deputy Director of the Offices of Economic Research, Regional Development Planning, and District and Area Planning. They also include Area Office Directors with respect to projects located in their areas. Clerical employees do not occupy positions involving discretion with respect to the granting of assistance under the Act. The discretionary nature of the positions and activities of other employees shall be determined by the Assistant Secretary at such time as the employee terminates his employment.

(e) The amendments to paragraphs (a) and (b) of this section apply to applications accepted and numbered by the EDA Regional Office or EDA Washington Office after February 28, 1974.

[38 FR 2287, Jan. 23, 1973, as amended at 39 FR 3818, Jan. 30, 1974; 39 FR 44970, Dec. 30, 1974; 40 FR 49078, Oct. 21, 1975; 50 FR 20747, May 20, 1985; 52 FR 27539, July 22, 1987]

§ 309.8 Penalties.

(a) Pursuant to section 710(a) of the Act and 18 U.S.C. 1001, whoever makes any statement knowing it to be false, or whoever willfully overvalues any security, for the purpose of obtaining for himself or for any applicant any financial assistance under the Act or any extension thereof by renewal, deferment of action or otherwise, or the acceptance, release or substitution of security therefor, or for the purpose of influencing in any way the action of EDA or members of its staff, or for the purpose of obtaining money, property, or anything of value, under the Act, shall be punishable by a fine of not more than $10,000 or by imprisonment for not more than 5 years, or both.

(b) Whoever, being connected in any capacity with EDA in the administration of this Act:

(1) Embezzles, abstracts, purloins, or willfully misapplies any moneys, funds, securities, or other things of value, whether belonging to him or pledged or otherwise entrusted to him, or

(2) With intent to defraud EDA or any other body politic or corporate, or any individual, or to deceive any officer, auditor, or examiner, makes any false entry in any book, report, or statement of or to EDA, or withou being duly authorized draws any orde or issues, puts forth, or assigns an note, debenture, bond, or other oblig tion, or draft, bill of exchange, mor gage, judgment, or decree thereof, or

(3) With intent to defraud partic pates or shares in or receives directl or indirectly any money, profit, pro erty, or benefit through any transa tion, loan, grant, commission, contrac or any other act of EDA, or

(4) Willfully gives any unauthoriz information concerning any futu action or plan of EDA which mig affect the value of securities, having such knowledge invests or sp ulates, directly or indirectly, in the curities or property of any company corporation receiving loans, grants, other assistance from the Assista Secretary,

shall be punished by a fine of more than $10,000 or by imprisonm for not more than 5 years, or both.

[38 FR 2287, Jan. 23, 1973, as amended a FR 3818, Jan. 30, 1974]

§ 309.9 Records and audit.

(a) Each recipient of assista under the Act shall keep such reco as EDA shall prescribe, includ records which fully disclose amount and the disposition by such cipient of the proceeds of such as ance, the total cost of the projec undertaking in connection with w such assistance is given or used, amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit. Records shall be kept for a period of three (3) years after the date of the final expenditure report or, for projects which are renewed annually, after the date of the submission of the annual expenditure report except that:

(1) If audit findings have not been resolved, these records are to be retained beyond the three (3) year period;

(2) Records for nonexpendable property shall be retained for three (3) years after its final disposition;

(3) When grant records are transferred to or maintained by EDA, the three (3) year retention requirement is not applicable.

(b) The Assistant Secretary, the Comptroller General of the United States, or any of their duly authorized representatives shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under the Act.

[38 FR 2287, Jan. 23, 1973, as amended at 40 FR 13204, Mar. 25, 1975]

§ 309.10 Assurance of job opportunities for the unemployed.

(a) Applicants for business development loans under section 202 of the Act and direct and substantial beneficiaries of title IX grants and EDA assisted public works project must submit to EDA assurances of compliance with the EDA policy of assuring job opportunities for the unemployed and underemployed, unless in the case of business development loans under section 202 of the Act, EDA determines that the applicant shall obtain for EDA such assurances from other parties. The assurances shall indicate the intention of the applicant to give preferential consideration for employment, wherever possible, to the long term unemployed and underemployed residing in the project area, in connection with the project assisted by EDA.

(b) For the purpose of this section, substantial beneficiaries of public works assistance are those industrial commercial enterprises which:

(1) Are cited in the application and;

(i) Provide all or part of the justification of the project or,

(ii) Will, as a direct result of EDA's assistance, create or save 10 or more jobs, or

(2) Although not cited in the application, in the opinion of the Assistant Secretary, provide all or part of the justification of the project.

[38 FR 2287, Jan. 23, 1973, as amended at 38 FR 18870, July 16, 1973; 39 FR 44970, Dec. 30, 1974]

§ 309.11 Special-purpose units of local government.

(a) When both special-purpose units of local government and units of general local government are eligible to receive financial assistance under the Act, in absence of substantial reasons to the contrary, such assistance shall be made to units of general local government rather than to special-purpose units of local government, as required by section 4232 of the "Intergovernmental Cooperation Act of 1968" (40 U.S.C. 531-535; 42 U.S.C. 4201, 4211, 4214, 4221-4225, 4231-4233, 4241, 4244).

(b) Definitions. As used in this section:

"*Unit of general local government*" means any city, county, town, parish, village or other general purpose political subdivision of a State.

"*Special-purpose unit of local government*" means any special district, public purpose corporation, or other strictly limited purpose political subdivision of a State, but does not include a school district.

§ 309.12 Preapproval construction.

It is the policy of EDA to discourage the undertaking of any construction prior to the submission of an application for financial assistance. Commencement of a project prior to approval of the application for assistance is not prohibited but may jeopardize the favorable consideration of such application since, among other things, it raises a rebuttable presumption that funds necessary for the accomplishment of the project are otherwise available and that proper contracting procedures and labor standards have not been followed.

§ 309.13 EDA assistance additional to other Federal assistance.

All financial assistance under the Act shall be in addition to any other Federal assistance previously authorized. No assistance under the Act will be used to reduce or diminish the proportional amount of any such other Federal assistance to which any eligible applicant for EDA assistance would otherwise be entitled under the provisions of any other act.

§ 309.14 Design, construction, and alteration of buildings to accommodate the physically handicapped.

(a) Any building or facility financed in whole or in part with assistance under the Act must be designed, constructed, or altered, so as to insure ready access to, and use of, such building or facility by the physically handicapped, as required by Pub. L. 90-480 (42 U.S.C. 4151-4156) and the regulations promulgated thereunder (41 CFR Subpart 101-19.6).

(b) Except as otherwise provided in paragraph (c) of this section, every such building, except a residential structure or a facility designed, constructed, or altered after September 2, 1969, shall be designed, constructed, or altered in accordance with the minimum standards contained in the "American National Standard Specifications for Making Buildings and Facilities Accessible To, and Usable By, the Physically Handicapped," Number A 117.1 (1971) approved by and available from the American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

(c) The standards established in paragraph (b) of this section shall not apply to:

(1) The design, construction, or alteration of any portion of a building or facility which need not, because of its intended use, be made accessible to, or usable by, the public or by physically handicapped persons;

(2) The alteration of an existing building if the alteration does not involve the installation of, or work on, existing stairs, doors, elevators, toilets, entrances, drinking fountains, floors, telephone locations, curbs, parking areas, or any other facilities susceptible of installations or improvements to accommodate the physically handicapped.

(3) The alteration of an existing building or facility, or of such portions thereof, to which application of the standards is not structurally possible.

(4) The construction or alteration of a building or facility, for which bids have already been solicited, or plans and specification have been completed, or substantially completed on or before September 2, 1969.

(d) The standards established in paragraph (b) of this section may be modified or waived on a case-by-case basis: *Provided*, That upon application of EDA the Administrator of the General Services Administration determines that such waiver or modification is clearly necessary.

[38 FR 2287, Jan. 23, 1973, as amended at 4 FR 23146, May 6, 1977]

§ 309.15 Flood hazard.

(a) In accordance with Executive Order 11988, all applications for financial assistance will be reviewed by EDA for the purposes of avoiding to the extent possible, the long and short term adverse impacts associated with the occupancy and modification of floodplains, and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative, minimizing exposure of the proposed project to potential flood damage; any subsequent need for future Federal expenditures for flood protection and flood disaster relief and the potential to impact the natural values and functions of the floodplain under Executive Order 11988.

(b) EDA shall make no initial, interim, or final disbursement of any financial assistance on projects approved on and after March 2, 1974, under Titles I and II of the Act for acquisition or construction purposes for use in any area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, unless the building or any personal property to which such financial assistance relates is, during the anticipated economic or useful life of the project, covered by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, as amended, whichever is less; provided that if the financial assistance provided is in the form of a loan or an insurance or guaranty of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan. Notwithstanding the other provisions of this subsection, flood insurance shall not be required on any State-owned property that is covered under an adequate State policy of self-insurance satisfactory to FEMA.

(c) EDA shall make no initial, interim, or final disbursement of any financial assistance on projects approved on and after July 1, 1975, under Titles I and II of the Act for acquisition or construction purposes for use in any area identified by the Federal Emergency Management Agency as having special flood hazards unless the community in which such area is situated is then participating in the national flood insurance program.

(d) For purposes of paragraphs (b) and (c) of this section, "financial assistance for acquisition or construction purposes" means any form of financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building, and for machinery, equipment, fixtures, and furnishings contained or to be contained therein.

(e) The provisions of paragraphs (b), (c), and (d) are required by sections 102(a), 102(c), and 202(a) of the Flood Disaster Protection Act of 1973 (87 Stat. 975, 978, 982).

Pub. L. 93-234, 87 Stat. 983)

[39 FR 7926, Mar. 1, 1974, as amended at 51 FR 23043, June 25, 1986; 53 FR 13252, Apr. 22, 1988]

§§ 309.16—309.17 [Reserved]

§ 309.18 Environmental requirements.

(a) It is the policy of EDA to insure that proper environmental review of its actions take place; that there is a proper balance between the goals of economic development and environmental enhancement in its actions; and, that adverse environmental impacts from its actions are mitigated or avoided to the extent possible.

(b) Environmental assessments of EDA actions are conducted in accordance with the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et. seq.*), the Environmental Quality Improvement Act (42 U.S.C. 4371 *et. seq.*), The Clean Air Act, as amended (42 U.S.C. 7401 *et. seq.*), the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et. seq.*), The Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271 *et. seq.*), the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001 *et. seq.*), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et. seq.*), and the Council on Environmental Quality (CEQ) Regulations (40 CFR Section 1500-1508), as specified in EDA Directives 17.02-2, 17.02-7, and 17.04, as hereafter amended or superseded. Directives are available from any EDA office.

[45 FR 74902, Nov. 13, 1980, as amended at 51 FR 23043, June 25, 1986; 53 FR 13252, Apr. 22, 1988]

§ 309.19 Relocation assistance and land acquisition policies.

Provisions relating to relocation assistance and land acquisition policies are contained in Part 310 of this chapter.

§ 309.20 Nondiscrimination.

Provisions relating to nondiscrimination are contained in Part 311 of this chapter.

§ 309.21 Additional information.

The Assistant Secretary may require such additional information, evidence, or assurances from applicants and recipients of EDA financial assistance as he deems appropriate.

§ 309.22 Forms.

Requests or applications for assistance under this chapter shall be made on appropriate forms which may be obtained from EDA Regional Offices: *Provided*, That a timely application in writing other than on a form may be accepted as a valid application where

(a) It contains substantially the same information requested on the pertinent form, and

(b) It evidences an intention on the part of the applicant that it be considered as an application and is not merely indicative of an intent to apply.

§ 309.23 Where to file; timeliness of filing.

(a) All requests or applications for assistance under this chapter may be filed with or forwarded to the appropriate offices listed in §§ 301.30 and 301.31 of this chapter. Filing with or forwarding to the Washington office is appropriate in only limited instances.

(b) In the event the eligibility of a redevelopment area or economic development district is suspended or terminated by EDA, applications for assistance for which designation is a prerequisite (including economic development centers and eligibility for bonus grants), which applications are filed with or forwarded to the appropriate office before suspension or termination of eligibility, will be processed by EDA in the usual manner. The filing or delivery of such applications will be considered if

(1) The application is mailed by the applicant to the appropriate Regional Office and it bears a postmark not later than midnight of the date of suspension or termination of eligibility, although it may be received thereafter, or

(2) The application is delivered to the appropriate office not later than midnight of the date of suspension or termination of eligibility.

§ 309.24 Requests to reopen declined applications.

EDA may consider a request to reopen a declined application if

(a) The request to reopen is timely filed in accordance with § 309.23 and is accompanied by substantial new information of a material nature, and sufficient additional documentation, to warrant the reconsideration of the project; or

(b) The request to reopen is made and received after the date of suspension or termination of eligibility, but the declination of the application was based on a material error or mistake by EDA; the request to reopen was received within a reasonable period of time after the error or mistake was discovered or should have been discovered; and the application would not have been declined but for the error or mistake.

§ 309.25 Procedures in disaster areas.

In disaster areas the Assistant Secretary may waive or modify those EDA administrative procedural conditions which are non-statutory in character relating to grants, loans, or contracts which would otherwise prevent the giving of assistance if the inability to meet such procedures is a result of the disaster.

[38 FR 18870, July 16, 1973]

§ 309.26 Project modification.

(a) *Public works projects.* (1) Proposed modifications in public works project receiving assistance under sections 101, 201, 304, and 403 of the Act, and Titles IX and X of the Act must comply with the following requirements.

(i) The proposed changes must result from joint discussions between EDA and the grantee.

(ii) The proposed changes must be submitted to EDA for appropriate program and technical reviews.

(iii) The proposed changes must be accompanied by revised cost estimates to verify that the project can still be contructed within the approved funds.

(A) If the proposed changes reduce the project's cost, funds which would make the EDA grant rate exceed the maximum grant rate in the original offer will be deobligated unless the Assistant Secretary determines that increasing the grant rate to the maximum allowable grant rate at the time the project was approved is necessary to complete the project.

(2) Proposed changes will be processed for approval following normal amendment procedures.

(3) A change of scope modification to a project which was funded in a prior fiscal year can not be approved. Change of scope modifications consist of changes in project need, purpose and scope (community served and nature of the project). EDA is under no obligation to accept proposed project changes and may choose to deobligate the project funds. The following project changes, as determined on a case by case basis, will not be accepted:

(i) Changes which would substantially alter the project.

(ii) Changes in the economic or community development purpose of the project.

(iii) Changes in the target population which will benefit from the project.

(iv) Limitations in the accessibility of project facilities to the target population.

(v) Changes in the general geographic location (i.e., city, community, Indian Reservation, Redevelopment Area) of the project.

(b) *Business development loan and guarantee projects.* (1) Proposed modifications in loan and guarantee projects receiving assistance under sections 202 and 304 of the Act, Title IX of the Act, and Title II, Chapter 3 of the Trade Act of 1974 (for projects approved prior to September 30, 1981) must comply with the following requirements.

(i) The proposed changes must result from joint discussions between EDA and the borrower.

(ii) The proposed changes must be submitted to EDA for appropriate program and technical reviews.

(iii) The proposed changes must be accompanied by revised cost estimates to verify that the project still can be accomplished within the approved funds.

(2) Proposed changes will be processed following normal amendment procedures.

(3) A change of scope modification to a project which was funded in a prior fiscal year may not he approved. Change of scope modifications consist of changes in project need, purpose and scope (community), served and nature of the project). EDA is under no obligation to accept proposed changes and may choose to deobligate the project's funds. The following changes will not be accepted:

(i) Changes which would substantially alter the project.

(ii) Changes in the economic or community development purpose of the project.

(iii) Changes in the target population which will benefit from the project.

(iv) Limitations in the accessibility of project facilities to the target population.

(v) Changes in the general geographic location (i.e., city, community, Indian Reservation, Redevelopment Area) of the project.

(Sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); Dept. of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended))

[43 FR 3350, Jan. 25, 1978, as amended at 46 FR 860, Jan. 5, 1981; 51 FR 37176, Oct. 20, 1986; 53 FR 51237, Dec. 21, 1988]

§ 309.27 Land use near Federal airfields.

No financial assistance under the Act will be approved for a project involving public or privately owned land adjacent to or in the vicinity of a federally owned or operated airfield unless the applicant can demonstrate that the proposed project is compatible with the airfield land use plan prepared for that facility.

[41 FR 3286, Jan. 22, 1976]

§ 309.28 Grantee procurement standards.

Grantees shall procure supplies, equipment, construction and other services in accord with the procurement standards set forth in Attachment O of Office of Management and Budget (OMB) Circular No. A-110 (nonprofit organizations) or Attachment O of OMB Circular No. A-102 (State and local governments), as appropriate.

(Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended))

[46 FR 9026, Jan. 28, 1981]

§ 309.29 Use of lead-based paints on residential structures.

(a) As required by the Lead-based Paint Poisoning Prevention Act (see 42 U.S.C. 4831), recipients of financial assistance to construct or rehabilitate residential structures shall assure that paint used on the project on applicable surfaces does not contain lead in excess of the percentages set forth in paragraphs (a)(1) and (a)(2) of this section. In determining compliance with these standards, the lead content of the paint will be measured on the basis of total nonvolatile content of the paint or on the basis of an equivalent measure of lead in the dried film of paint already applied.

(1) For paint manufactured on or before June 22, 1977, paint may not contain lead in excess of five-tenths of 1 percent lead by weight.

(2) For paint manufactured after June 22, 1977, paint may not contain lead in excess of 6 one-hundredths of 1 percent lead by weight.

(b) As a condition to receiving assistance under the Act, recipients shall assure that the restriction against the use of lead-based paint is included in all contracts and subcontracts involving the use of Federal funds.

(c) Definitions. (1) "*Applicable surfaces*" means all interior surfaces and those exterior surfaces which are readily accessible to children under 7 years of age.

(2) "*Residential structures*" means houses, apartments, or other structures intended for human habitation, including institutional structures where persons reside, which are accessible to children under 7 years of age, such as day care centers, intermediate and extended care facilities, and certain community facilities.

(Sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); Dept. of Commerce Organization Order 10-4 (Sept. 30, 1975), as amended (40 FR 56702, as amended at 40 FR 58878 and 41 FR 35548))

[43 FR 15148, Apr. 11, 1978]

PART 310—RELOCATION ASSISTANCE AND LAND ACQUISITION POLICIES

AUTHORITY: Sec. 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601); Sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); Sec. 1-105, Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended).

§ 310.1 Coverage.

Recipients of EDA financial assistance (states and political subdivisions of states) are subject to requirements set forth at 15 CFR Part 11.

[51 FR 24516, July 7, 1986; 51 FR 27828, Aug. 4, 1986]

PART 311—CIVIL RIGHTS REQUIREMENTS ON EDA ASSISTED PROJECTS

Sec.

311.1 Introduction.
311.2 EDA Guidelines.
311.3 Requirements for applicants, grantees, borrowers, and "other parties".
311.4 Public planning organizations.

AUTHORITY: Sec. 701. Pub. L. 89-136; 79 Stat. 570 (42 U.S.C. 3211); sec. 1-105, Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended); Age Discrimination Act of 1975, as amended, 42 U.S.C. sec. 6101 *et seq.* and the government wide regulations implementing the Act, 45 CFR Part 90.

§ 311.1 Introduction.

(a)(1) Section 601 of Title VI of the Civil Rights Act of 1964 provides that,

> "No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

(2) The Department of Commerce has provided regulations at 15 CFR Part 8, in accordance with this provision.

(3) In addition, EDA in its programs enforces provisions, similar to section 601, forbidding discrimination on the ground of sex (42 U.S.C. 3123) and handicap (26 U.S.C. 794).

(4) The Department of Commerce (DOC) has promulgated a regulation prohibiting discrimination against the handicapped in federally assisted programs operated by DOC. This regulation, published at 15 CFR Part 8b, Subpart A—General Provisions (§ 8b.1-8b.10); Subpart B—Employment Practices (§§ 8b.11-8b.15); Subpart C—Program Accessibility (§§ 8b.16-8b.18) and Subpart E—Procedures (§§ 8b.26), applies to EDA Applicants and Recipients. Recipients are EDA Grantees, Borrowers and "Other Parties".

(5) The Department of Commerce (DOC) has promulgated a regulation prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance. This regulation, published at 15 CFR Part 20 (51 FR 28925, August 13, 1986) applies to EDA applicants and recipients.

(b) In order to enforce the nondiscrimination provisions listed in paragraphs (a) (1) through (3) of this section, EDA imposes certain requirements, described below, on applicants, grantees, borrowers, and certain beneficiaries of its programs which are called "other parties". Title 15 CFR 8.3 defines "other parties" as those who enjoy "direct or substantial participation in any program such as a contractor, subcontractor, provider of employment, or user of facilities or services provided under any program." While construction contractors and subcontractors are technically "other parties" under the Title VI jurisdiction of EDA, these regulations do not apply to them since civil rights review, monitoring, and enforcement for them are, under Executive Order 11246, the responsibilities of the Department of Labor.

(c) Failure to comply with provisions described in this part, will result in enforcement in accordance with DOC regulations at 15 CFR Parts 8, 8b, 20, or will result in other sanctions and legal actions, as appropriate.

(Sec. 701, Pub. L. 89-136, 79 Stat. 570) (42 U.S.C. 3211); Sec. 1-105, E.O. 12185; Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended))

[44 FR 20634, Apr. 6, 1979, as amended at 48 FR 33699, July 25, 1983; 52 FR 11627, Apr. 10, 1987]

§ 311.2 EDA Guidelines.

(a) EDA has written *Civil Rights Guidelines* that elaborate the requirements listed below for applicants, grantees, borrowers, and "other parties" other than those involved in construction contracting. The *Guidelines* also describe EDA's policy and procedures for complaint processing, compliance reviews, and enforcement.

(b) These *Guidelines* are given to all applicants and to those "other parties" subject to § 311.3(c)(2) of this part. They are also available upon request from any of the Regional Offices whose addresses are provided in § 301.31.

[44 FR 20634, Apr. 6, 1979]

§ 311.3 Requirements for applicants, grantees, borrowers, and "other parties".

(a) Applicants for EDA financial assistance must submit for approval:

(1) An assurance that they will comply with the Department of Commerce and EDA regulations designed to prevent discrimination;

(2) Information on their civil rights status and involvement in charges of discrimination;

(3) Information about the distribution of project service benefits, when appropriate;

(4) Employment information; and

(5) An Affirmative Action Plan, if they will create or save 50 or more permanent jobs as the result of EDA assistance.

(b) Grantees and borrowers of EDA financial assistance must:

(1) Disseminate project civil rights information to the public;

(2) Retain employment records;

(3) Submit compliance reports, if they will create or save 15 or more permanent jobs as a result of EDA assistance;

(4) Allow on-site compliance reviews and provide access to information if necessary to ascertain compliance; and

(5) If they received assistance for construction or improvement to real property: obtain from each lessee, buyer or other transferee of the real property (such as industrial park space) an assurance or covenant, as ap-

plicable, that it will comply with EDA civil rights requirements.

(c) "*Other Parties*". (1) All "other parties" on EDA-assisted projects must, if necessary to ascertain compliance, submit to on-site compliance reviews and provide access to information.

(2) In addition, certain "other parties" must comply with the requirements for applicants stated above in § 311.3(a) (1), (2), (4), and (5) and the requirements for grantees in § 311.3(b) (1), (2), and (3). These "other parties" are those who create or save 15 or more permanent jobs as the result of EDA assistance; and *either*

(i) Are specifically cited in the application for funds as a project beneficiary; *or*

(ii) Locate or are located in an assisted industrial park before EDA has made its final disbursement for the park.

(d) Applicants for and recipients of EDA financial assistance shall meet all the requirements set forth in 15 CFR Part 8b, Subparts A, B, C, and E and in 15 CFR Part 20.

(Sec. 701, Pub. L. 89-136, 79 Stat. 570) (42 U.S.C. 3211); sec. 1-105, E.O. 12185; Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended))

[44 FR 20634, Apr. 6, 1979, as amended at 48 FR 33699, July 25, 1983; 52 FR 11627, Apr. 10, 1987]

§ 311.4 Public planning organizations.

(a) Minorities must be represented on the governing boards, or the EDA components established under § 303.4-2 of 13 CFR Part 303, of public planning organizations receiving EDA assistance as set forth in the *Guidelines.* Minorities must also be represented, as required by the *Guidelines,* on any executive committees as may be established by such governing boards or EDA components. Planning organizations shall comply with the requirements of the *Guidelines* to provide minorities with the opportunity to select their own representatives.

(b) Each planning organization must develop a written Affirmative Action Plan for its employees as set forth in the *Guidelines.*

(Sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); Dept. of Commerce Organization Order 10-4 (Sept. 30, 1975), as amended (40 FR 56702, as amended))

[45 FR 55704, Aug. 21, 1980]

PART 312—SUPPLEMENTAL AND BASIC ASSISTANCE UNDER SECTION 304 OF THE ACT

Sec.
312.1 Purpose.
312.2 Apportionment among States.
312.3 State matching share.
312.4 Selection and qualification of projects for supplementary assistance.
312.5 Selection and qualification of projects for basic grant or loan assistance.
312.6 Construction management and disbursement.
312.7 Conditions for disbursement of funds.

AUTHORITY: Sec. 701, Pub. L. 89-136 (42 U.S.C. 3211), 79 Stat. 570 and Dept. of Commerce Organization Order 10-4, Apr. 1, 1970 (35 FR 5970).

SOURCE: 39 FR 44970, Dec. 30, 1974, unless otherwise noted.

§ 312.1 Purpose.

The purpose of this subpart is to set forth the requirements and procedures governing the extension of assistance under section 304 of the Act.

§ 312.2 Apportionment among States.

The Assistant Secretary shall determine as of the end of each fiscal year the total of all grants obligated for each State under Title I of the Act since August 26, 1965, and the total of all such grants obligated for all the States since August 26, 1965. Funds appropriated and made available for carrying out the purpose of section 304 of the Act shall be obligated to the several States in the ratio that grants obligated in each State under Title I from August 26, 1965, to the end of the preceding fiscal year bear to the total of all such grants made to all States during the same period. The obligation of section 304 funds to the States shall be effected by an agreement or acceptance setting forth or identifying the terms and conditions for the use and availability of such funds, which shall include the provisions of section 304 of the Act and rules and regulations issued by the Assistant Secretary pursuant thereto.

§ 312.3 State matching share.

Funds obligated to a State shall be available for supplementing or making grants and loans authorized under titles I, II, III (other than planning grants authorized under sections 301(b) and 302), IV, and IX of the Act for projects within such States provided that the State makes a contribution which is equal to at least 25 percent of the funds being made available to a particular project from funds appropriated under section 304 of the Act. Participations in or contributions to a project by local subdivisions of a State or private individuals or organizations shall not be deemed contributions by the State as required by this section.

(Pub. L. 94-487, 90 Stat. 2331 (42 U.S.C. 3121 et seq.))

[42 FR 6365, Feb. 2, 1977]

§ 312.4 Selection and qualification of projects for supplementary assistance.

The selection of projects to be assisted by the use of funds in supplementing grants or loans made by EDA under titles I, II, III (other than planning grants authorized under sections 301(b) and 302), IV, and IX of the Act shall be made by the States and communicated to the Assistant Secretary on forms prescribed by the Assistant Secretary. Eligibility and compliance of a project for assistance shall be deermined by the Assistant Secretary ncident to the evaluation of the appliation for the underlying basic grant r loan assistance for such project.

Pub. L. 94-487, 90 Stat. 2331 (42 U.S.C. 3121 t seq.))

42 FR 6365, Feb. 2, 1977]

312.5 Selection and qualification of projects for basic grant or loan assistance.

(a) In those cases where the States ropose to use funds for basic grant or oan assistance for projects meeting equirements for assistance under tles I, II, III (other than planning rants authorized under sections 01(b) and 302), IV, and IX of the Act, nd for which funds have been deterined to be unavailable by the Assistnt Secretary under titles I, II, III, IV, nd IX, the States shall communicate e proposed use of the funds to the ssistant Secretary on forms prescribed by the Assistant Secretary. A proposal shall contain or be accompanied by the documentation or certification evidencing compliance with the requirements, conditions, and limitations as would be applicable to such project if it were being considered for funding under titles I, II, III (other than planning grants authorized under sections 301(b) and 302), IV, and IX of the Act. Eligibility and compliance of a project for assistance shall be determined by the Assistant Secretary in the same manner as applicable to projects receiving only supplementary assistance under section 304 of the Act.

(b) A proposal by a State for the use of funds for a basic grant or loan shall be accompanied by evidence that the principal governing authorities for the area in which a project is to be located have approved the project.

(c) Requests for the disbursement of funds for basic loans by a State shall be accompanied by assurances that the proceeds from the repayment of the loans will be used for economic development in a manner consistent with the Act. Assurances shall include a contractual agreement between EDA and the State describing how repayment proceeds will be used.

(d) Funds may not be used by a State as a grant to a private profit-making entity.

(Pub. L. 94-487, 90 Stat. 2331 (42 U.S.C. 3121 et seq.))

[39 FR 44970, Dec. 30, 1974, as amended at 42 FR 6365, Feb. 2, 1977]

§ 312.6 Construction management and disbursement.

Projects assisted through the use of funds in supplementing EDA grants or loans under title I, II, III (other than planning grants authorized under sections 301(b) and 302), IV, and IX of the Act or in providing basic grants or loans shall be subject to the same procedures and requirements relating to post-approval compliances, construction management, and disbursement as applicable to projects funded under titles I, II, III, IV, and IX of the Act.

(Pub. L. 94-487, 90 Stat. 2331 (42 U.S.C. 3121 et seq.))

[42 FR 6365, Feb. 2, 1977]

§ 312.7 Conditions for disbursement of funds.

(a) It shall be a condition for the disbursement of funds that a State shall conform to the requirements of the Act and provide acceptable evidence of compliance with requirements conditions and limitations applicable to projects assisted under titles I, II, III (other than planning grants authorized under section 301(b) and 302), IV, and IX of the Act. States shall be promptly notified of proposals which do not meet requirements.

(b) Subsequent to July 1, 1975, it shall be a condition for the disbursement of funds for any project that the State must make a showing:

(1) That such funds will be used in a manner consistent with the State planning process assisted under Subpart D of Part 307 if such a planning process has been established; or

(2) That such State is not receiving planning assistance under Subpart D of Part 307 but has an economic development planning process meeting the standards required for assistance under Subpart D of Part 307 and that the proposed use of funds is consistent with such planning process; or

(3) That the project is clearly of such nature that the Assistant Secretary may conclude that its implementation would not impair the benefits intended to be derived from an orderly economic development planning process.

(Pub. L. 94-487, 90 Stat. 2331 (42 U.S.C. 3121 et seq.))

[39 FR 44970, Dec. 30, 1974, as amended at 42 FR 6365, Feb. 2, 1977]

PART 313—JOB OPPORTUNITIES PROGRAM

Subpart A—Program Description and Allocation of Funds

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313.1 Purpose.
313.2 Definitions.
313.3 Recommendations for the allocation of funds for job producing programs and projects.
313.4 Final approval of allocations.
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313.6 Eligibility of programs and projects.
Sec.
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Subpart B—Requirements for Title X Assistance to EDA Programs

313.20 Purpose.
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Subpart A—Program Description and Allocation of Funds

AUTHORITY: Sec. 701 and 1006, Pub. L. 89-136 (42 U.S.C. 3211); 79 Stat. 570; as amended by Pub. L. 93-567 and Dept. of Commerce Organization Order 10-4 (Apr. 1, 1970) as amended (35 FR 5970 as amended at 40 FR 12532).

SOURCE: 40 FR 22537, May 23, 1975, unless otherwise noted.

§ 313.1 Purpose.

The purpose of this subpart is to set forth the general requirements and procedures pursuant to which the several eligible Federal programs and projects may receive financial assistance under the Job Opportunities Program established by Title X of the Public Works and Economic Development Act of 1965, as amended by Pub. L. 93-567. Requirements that apply only to EDA programs or projects which are eligible for financial assistance under this part are contained in Subpart B.

§ 313.2 Definitions.

(a) "Eligible Area" as used in this part means:

(1) Any area which the Secretary of Labor designates as an area which has a rate of unemployment equal to or in excess of 6.5 percent for three consecutive months, or

(2) Any area designated pursuant to section 204(c) of the Comprehensive

Employment and Training Act of 1973; or

(3) Any area designated by the Assistant Secretary pursuant to section 401 of the Public Works and Economic Development Act of 1965, as amended, as a redevelopment area.

§ 313.3 Recommendation for the allocation of funds for job producing programs and projects.

(a) The Assistant Secretary [illegible] recommend that funds be allocated to departments, agencies, and instrumentalities of the Federal Government and to regional commissions established by section 101 of the Appalachian Regional Development Act of 1965 or pursuant to section 502 of the Public Works and Economic Development Act of 1965, as amended, for use in funding programs and projects eligible under existing program authorities and qualifying under § 313.6 in order to expand or accelerate the job creating impact of such programs or projects for unemployed persons in eligible areas.

(b) No program or project eligible for assistance may be approved until the officials of the appropriate units of general government in the affected area have an adequate opportunity to comment on the specific proposal.

§ 313.4 Final approval of allocations.

Final approval of allocations of funds to the several Federal programs implementing Title X of the Act shall be reserved to the Secretary pursuant to paragraph 3 of Amendment 1 of Department of Commerce Organization Order 10-4.

§ 313.5 Program review and request for funds.

(a) Each department, agency or instrumentality of the Federal Government and each regional commission established by section 101 of the Appalachian Regional Development Act of 1965 or by section 502 of the Public Works and Economic Development Act of 1965, as amended, shall:

(1) Complete a review of its budget, plans and programs including State, substate and local development plans filed with such department, agency or commission;

(2) Evaluate the job creation effectiveness of programs and projects for which funds are proposed to be obligated in calendar year 1975 and additional programs and projects for which funds could be obligated in such year with Federal financial assistance under this part;

(3) Submit to the Assistant Secretary recommendations for programs and projects which have the potential to stimulate the creation of jobs for unemployed persons in eligible areas, together with appropriate requests for the funds needed for each program or project.

(b) Within 30 days of receipt the Assistant Secretary and the Secretary of Labor shall jointly review such recommendations and fund requests to determine eligibility under § 313.6.

(c) After the Assistant Secretary has consulted with appropriate departments, agencies and instrumentalities of the Federal Government or Regional Commissions, the Secretary shall, based upon recommendations from the Assistant Secretary, make allocations of funds to eligible programs and projects in accordance with the priority criteria set forth in § 313.7.

[40 FR 22537, May 23, 1975, as amended at 40 FR 43483, Sept. 22, 1975]

§ 313.6 Eligibility of programs and projects.

Funds allocated or utilized under this part shall be available only for programs or projects which the Assistant Secretary and the Secretary of Labor shall jointly determine are programs or projects:

(a) Which will contribute significantly to the reduction of unemployment in the area;

(b) Which can be initiated or strengthened promptly;

(c) With respect to which a substantial portion can be completed within 12 months after such allocation is made;

(d) Which are not inconsistent with locally approved comprehensive plans for the jurisdiction affected, whenever such plans exist; and

(e) Which will be approved giving first priority to programs and projects which are most labor intensive.

[40 FR 22537, May 23, 1975, as amended at 40 FR 43483, Sept. 22, 1975]

§ 313.7 Criteria for allocation of funds.

(a) In addition to the eligibility criteria outlined in § 313.6, the Assistant Secretary, in recommending allocations or utilizing funds under this part, shall assure that priority consideration is given to the following factors:

(1) The severity of unemployment in the area;

(2) The availability of unemployed persons in the area with skills that can and will be utilized in the proposed program or project (labor match factor);

(3) Labor intensity or the ratio of labor costs to total program or project costs;

(4) Leverage or the ratio of Title X funds to total funds;

(5) The ability of the program or project to generate long-term employment;

(6) Cost effectiveness or the cost of creating a man-year of employment; and

(7) The indirect benefit which is based upon whether the proposal has been reviewed as an ongoing or planned fiscal year 1977 program or project.

(b) Programs and projects will be evaluated and assigned a series of scores which indicate how effectively the project satisfies each statutory and policy factor. The maximum weights assigned to each factor are as follows:

	Maximum weight
Statutory factors:	
Unemployment	25
Labor match	25
Labor intensity	25
Policy factors:	
Leverage	5
Long-term employment	5
Cost effectiveness	15
Indirect benefit	(1)

[1] 0 or 25.

Projects will be numerically ranked in the order in which it is determined that each project best satisfies the statutory and policy factors.

(c) The Assistant Secretary shall recommend that approximately 85 percent of Title X funds be allocated on the basis of the highest program and project numerical scores. If necessary, recommendations for the remaining funds shall be made for programs and projects with the next highest scores in the following groups:

(1) Additional urban and rural area projects to meet the requirements of § 313.8(b);

(2) Additional projects in States where the initial allocation resulted in assistance too low to be in keeping with their levels of unemployment; and

(3) Projects proposed by those agencies which did not submit enough high scoring projects to test the agency's ability to demonstrate the effect of their priority proposals.

[40 FR 43483, Sept. 22, 1975]

§ 313.8 Limitations.

(a) A minimum of 50 percent of Part 313 funds shall be used for programs and projects in which no more than 25 percent of the funds will be used for nonlabor costs.

(b) Subject to available projects submitted by departments, agencies and instrumentalities of the Federal Government and Regional Commissions, the Assistant Secretary shall, in making recommendations under § 313.3, ensure that Title X funds are equitably distributed to urban and rural areas. Approximately 60 percent (but not less than 45 percent) of the available funds shall be allocated to projects in urban areas. Approximately 40 percent (but not less than 30 percent) of such funds shall be allocated to projects in rural areas.

(c) Programs and projects receiving funds which are made available by the Secretary under this part shall be initiated within a reasonable time period which shall be specified by the Secretary. If a program or project has not been initiated within the time period specified, the funds for such program or project shall be returned to the Secretary for reallocation.

(d) Allocations of funds under this part shall be subject to such terms and conditions as the Secretary may determine are necessary to carry out the purpose of Title X of the Public Works and Economic Development Act of 1965, as amended.

[40 FR 43484, Sept. 22, 1975]

§ 313.9 Administration of programs and projects.

Programs and projects receiving funds which are made available by the Secretary under this subpart shall be administered by the head of the department, agency or instrumentality of the Federal Government authorized to administer such program or project. All provisions of law authorizing and regulating such programs and projects shall be applicable except provisions:

(a) Requiring allocation of funds among the States;

(b) Limiting the total amount of such grants for any period; or

(c) Relating to the Federal contribution to any State or local government, whenever the President or head of such department, agency, or instrumentality of the Federal Government determines that any non-Federal contribution cannot reasonably be obtained by the State or local government concerned.

[40 FR 43484, Sept. 22, 1975]

Subpart B—Requirements for Title X Assistance to EDA Programs

AUTHORITY: Sec. 701, Pub. L. 89-136 (42 U.S.C. 3211); 79 Stat. 570; Department of Commerce Organization Order 10-4 (Apr. 1, 1970) as amended (35 FR 5970 as amended at 40 FR 12532).

SOURCE: 40 FR 25671, June 18, 1975, unless otherwise noted.

§ 313.20 Purpose.

The purpose of this subpart is to set forth the requirements for EDA programs and projects which are eligible for Title X funds under Subpart A of this section.

§ 313.21 Use of funds.

Funds allocated to EDA under Subpart A of this section may be used by the Assistant Secretary to:

(a) Fund existing EDA programs or projects authorized by the Public Works and Economic Development Act of 1965, as amended, which meet the requirements of Subpart A of this part; and

(b) Initiate new programs in eligible areas where necessary to effectively carry out the purposes of Title X of the Public Works and Economic Development Act of 1965, as amended. Programs initiated under this paragraph must meet the requirements of Subpart A of this part.

§ 313.22 Eligible areas.

(a) *Public works projects.* (1) In order to be eligible for Title X funds, public works projects authorized under the Act must be located in:

(i) A redevelopment area; or

(ii) An economic development center; or

(iii) A nondesignated area of an economic development district.

(2) Projects that are located in an economic development center or in a nondesignated area of an economic development district must also be located in:

(i) An area which the Secretary of Labor designated as an area which has a rate of unemployment equal to or in excess of 6.5 percent for three consecutive months; or

(ii) An area designated pursuant to section 204(c) of the Comprehensive Employment and Training Act of 1973.

(b) *New Title X programs.* In order to be eligible for Title X funds, projects which are part of new programs initiated by the Assistant Secretary pursuant to § 313.21(b) must be located in:

(1) A redevelopment area;

(2) An area which the Secretary of Labor designates as an area which has a rate of unemployment equal to or in excess of 6.5 percent for three consecutive months; or

(3) An area designated pursuant to section 204(c) of the Comprehensive Employment and Training Act of 1973.

§ 313.23 Eligible applicants.

(a) *Regular EDA programs.* Applicants which are eligible for assistance under an existing EDA program are eligible for the same kind of Title X assistance.

(b) *New Title X programs.* In limited situations the Assistant Secretary may consider applications from any public or private entity or from any person or group of persons for projects initiated under § 313.21(b) of this subpart.

§ 313.24 Eligible projects.

(a) Public works activities which are labor intensive and which meet the requirements of § 313.6 are eligible for assistance. Projects may include, but are not limited to, such activities as rehabilitation of buildings, street paving and repairs, painting, park developments, environmental improvements and other community improvement projects.

(1) In general, projects will be considered to be labor intensive if at least 50 percent of the Title X funds provided for that project are to be expended for direct labor costs.

[40 FR 29704, July 15, 1975]

§ 313.25 Maximum grant rates for Title X Public Works Activities.

Title X assistance provided for public works activities shall be in the form of grants only. The maximum grant rate for public works projects in eligible areas shall be determined by relative needs as follows:

	Maximum grant rates (percent)
Projects:	
(a) Projects for which the Assistant Secretary has determined that the non-Federal contribution cannot reasonably be obtained by the State or local government concerned	100
(b) Projects of Indian tribes which are or will be located on Indian reservations, or trust or restricted Indian-owned land areas	100
(c) All other projects using title X funds	80

§ 313.26 Project reports.

Each recipient of Title X funds shall submit a project report after the project is completed in order for the final disbursement of funds to be made. Such report shall be made on forms prescribed by the Assistant Secretary and shall contain information on the use of the facilities and data concerning employees who carried out the project activities.

§ 313.27 General requirements for Title X projects under existing EDA programs.

Projects authorized by existing EDA programs which receive Title X funds are subject to the same requirements, terms and conditions that apply to other projects authorized by the same EDA programs which do not receive Title X funds, except requirements:

(a) Relating to allocations of funds among the States;

(b) Limiting the total amount of such grants for any period; or

(c) Relating to the Federal contribution to any State or local government whenever the Assistant Secretary determines that any non-Federal contribution cannot reasonably be obtained by the State or local government concerned.

§ 313.28 General requirements for projects under new Title X programs.

Before any assistance can be extended for any program or project initiated by the Assistant Secretary pursuant to § 313.21(b) the following determinations must be made by the Assistant Secretary:

(a) Such program or project complies with the requirements and conditions set forth in §§ 309.1, 309.2, 309.4, 309.5, 309.6, 309.9, 309.14, 309.15, and Part 310 of these regulations.

(b) The recipients of such assistance and any "other parties" as defined in 15 CFR Subtitle A, Part 8 have executed assurances of compliances with Title VI of the Civil Rights Act of 1964, as amended, and with section 112 of Pub. L. 92-65 relating to discrimination on the basis of sex; and

(c) Such program or project complies with the requirements of the National Environmental Policy Act and the National Historic Preservation Act.

PART 314—PROPERTY MANAGEMENT STANDARDS

Subpart A—Real Property

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314.1 Scope.
314.2 Definitions.

Sec.
314.3 Authorized uses for real property acquired or improved with Federal funds.
314.4 Other uses and disposition of real property.
314.5 Mortgages.
314.6 Recording of covenants.

Subpart B [Reserved]

Subpart C—Excess Property

314.50 General requirements.

AUTHORITY: Sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); sec. 1—105, Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended).

SOURCE: 40 FR 60038, Dec. 31, 1975, unless otherwise noted.

Subpart A—Real Property

§ 314.1 Scope.

The requirements contained in this subpart apply to grant and combination grant/loan projects. They do not apply to projects for which assistance has been provided solely in the form of loans or by purchasing evidence of indebtedness.

§ 314.2 Definitions.

(a) *"Grantee/owner"* includes:

(1) Any grantee under Titles I, IV, IX, or X of the Act or Title II, Chapter IV of the Trade Act of 1974.

(2) The owner (lessor, lessee, or optionee, where appropriate) of:

(i) Real property on which a project facility is or will be located, or

(ii) Real property developed by the project in order to sell, lease or otherwise convey it for a specific purpose.

(b) *"Real property"* means any land, improved land, structures, appurtenances thereto, or other improvements, excluding movable machinery and equipment. Improved land also includes land which is improved by the construction of such facilities as roads, sewers, and water and gas lines which are not situated directly on the land but which improve such land.

(c) *"Sell"* and its derivatives shall include any conveyance or transfer of any interest in the real property including, but not limited to, renting or leasing such real property.

[41 FR 26566, June 28, 1976]

§ 314.3 Authorized uses for real property acquired or improved with Federal funds.

(a) The grantee/owner shall use any real property acquired or improved in whole or in part with Federal funds only for the authorized purpose of the original grant during the expected useful life of the project or for as long as the Assistant Secretary determines that such real property is needed. Should the grantee/owner fail to comply with this provision, EDA may require the grantee/owner to compensate the agency in accordance with the provisions in § 314.4.

(1) When the authorized purpose of the EDA grant is to develop land in order to sell, lease or otherwise convey it for a specific use, the Assistant Secretary may approve such sale, lease or other conveyance, if he determines that such conveyance is consistent with the authorized general and special purpose of the grant and EDA policies concerning, but not limited to, nondiscrimination, nonrelocation, excessive profits, and adequate consideration. If the Assistant Secretary has approved the sale, lease or other conveyance, the provisions of § 314.4 do not apply.

(b) In the event that the grantee/owner determines that the real property is no longer needed for the original grant purpose it may be used in other Federal grant programs, or programs that have purposes consistent with those authorized for support by EDA if the approval of the Assistant Secretary has been obtained.

§ 314.4 Other uses and disposition of real property.

Whenever the Assistant Secretary determines that the real property is no longer needed as provided in § 314.3 and the expected useful life of such real property has not expired, the grantee/owner shall return all such real property furnished or purchased wholly with Federal grant funds to the control of EDA. In the case of real property acquired or improved in part with Federal grant funds, the grantee/owner may use the real property for purposes other than those provided in § 314.3 or dispose of such property upon compensating the Federal Government for its fair share of the real property. The Federal share of the real property shall be the amount computed by applying the percentage of the Federal participation in the total cost of the grant program for which the real property was acquired or improved to the current fair market value of the real property.

§ 314.5 Mortgages.

Except when real property is sold pursuant to § 314.3(a)(1), such real property may not be used to secure a mortgage or deed of trust or otherwise be used as collateral, except to secure a loan made by a State or Federal agency or other public body participating in the same project, unless EDA has been compensated in accordance with the provisions of § 314.4 prior to the attachment of the encumbrance.

(a) The Assistant Secretary may waive the provisions of this paragraph when he determines all of the following that:

(1) All proceeds from a loan which is secured by a lien, mortgage, or any other encumbrance on property which is financed by an EDA public works grant, shall be available only to the recipient of the EDA public works grant, and all proceeds from such secured loan shall be used only on such project (excluding working capital uses) for which the EDA public works grant was approved.

(2) The applicant because of its nature and makeup does not have the financial resources to provide the non-Federal share without a loan from a private lender;

(3) It is in the best interest of the government not to provide to the applicant a Public Works Loan for its matching share;

(4) The project is closely allied with the community in which it is to be located which would make it unlikely that foreclosure by a private lender would be undertaken;

(5) The private lender would not otherwise lend money without the security of a lien on the project property;

(6) There is no reasonable expectation that the loan by the private lender will not be repaid thus eliminating any reasonable expectation of foreclosure by the private lender;

(7) Whenever possible the grantee has obtained an agreement from the private lender that in the event of foreclosure of the project that such property would continue to be used for public purposes.

(b) The Assistant Secretary may, after a grant is in place, waive the provisions of this paragraph when he determines all of the following:

(1) All proceeds from a loan which is secured by a lien, mortgage, or any other encumbrance on property which has been financed by an EDA public works grant shall be available only to the recipient of the EDA public works grant, and all proceeds from such secured loan shall be used only by the recipient on such project for which the EDA public works grant was approved, or for the grant recipient's working capital purposes relating to the project.

(2) The grantee because of its nature and makeup, without a loan from a private lender, does not have the funds to further operate this project;

(3) It is in the best interest of the government not to provide a Public Works loan to the grantee;

(4) The project is closely allied with the community in which it is located, making it unlikely that foreclosure by a private lender would be undertaken;

(5) The private lender would not otherwise lend money without the security of a lien on the project property;

(6) There is no reasonable expectation that the loan by the private lender will not be repaid; thereby eliminating any reasonable expectation of foreclosure by the private lender; and

(7) Whenever possible, the grantee has obtained an agreement from the private lender that in the event of foreclosure of the project, that such property would continue to be used for public purposes.

(c) The Assistant Secretary may waive the provisions of this paragraph as to an encumbrance on property which is financed by an EDA public works grant when he/she determines that the encumbrance arises solely from the provisions of a pre-existing water or sewer facilities encumbrance which by its terms extends to additional property connected to such facilities. The Assistant Secretary's determination shall make reference to the specific provisions (for example, "water system and all accessions or additions or improvements thereto") which extend the terms of the pre-existing encumbrance to the property which is financed by the EDA public works grant.

(Sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); sec. 1-105, Executive Order 12185; Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended))

[40 FR 60038, Dec. 31, 1975, as amended at 48 FR 29835, June 29, 1983; 49 FR 22464, May 30, 1984; 50 FR 6339, Feb. 15, 1985; 51 FR 1783, Jan. 15, 1986; 53 FR 51237, Dec. 21, 1988]

§ 314.6 Recording of covenants.

(a) The grantee/owner shall execute a document satisfactory to the Regional Director which shall be recorded, before the initial disbursement of funds, in the pertinent county public records affecting real property, or filed with the appropriate office of the Bureau of Indian Affairs in the case of Indian projects. The document shall specify in years the expected useful life of the project which may be derived from Internal Revenue Service depreciation schedules, an architect's or engineer's certified determination for this particular project, or the term utilized by a pertinent State regulatory agency. The document shall include, but not be limited, to the following:

(1) A prohibition against the use of the project during its expected useful life for other than the purpose for which the project was financed by the Economic Development Administration unless the approval of the Assistant Secretary is first obtained in writing;

(2) A prohibition against the sale, lease, transfer, conveyance, or mortgage of the real property acquired as a part of the project or real property specifically improved and included as a part of the project unless the approval of the Assistant Secretary is first obtained in writing. Such approval shall not be arbitrarily withheld, but shall be based on the Assistant Secretary's decision that the sale, lease, transfer, conveyance, or mortgage of the real property is in furtherance of purposes consistent with those authorized for support by EDA and is consistent with EDA policies;

(b) The provisions of paragraphs (a) (1) and (2) of this section shall apply only where EDA grant funds are used for the construction or rehabilitation of buildings or recreational facilities and shall not apply if:

(1) The project facilities are not susceptible of being used for other than their intended purposes, or

(2) The EDA grant is only a very small investment in a large project.

(c) Whenever real property is sold, leased or otherwise conveyed pursuant to § 314.3(a)(1), the grantee/owner shall add a covenant to the deed, or document conveying such interest, which must be satisfactory to the Assistant Secretary, prohibiting the use of such property for any purpose other than the general and special purpose of the grant as determined by the Assistant Secretary. The grantee shall notify EDA of the prospective conveyance and provide EDA with a copy of the covenant at least 30 days before the sale, lease or conveyance of the property. The instrument containing the covenant approved by the Assistant Secretary shall be recorded in the pertinent county public records affecting real property or filed with the appropriate office in the Bureau of Indian Affairs in the case of Indian projects. Should the grantee fail to comply with this provision, EDA may require the grantee to compensate the agency in accordance with the provisions of § 314.4.

[40 FR 60038, Dec. 31, 1975, as amended at 41 FR 26566, June 28, 1976]

Subpart B [Reserved]

Subpart C—Excess Property

§ 314.50 General requirements.

(a) EDA is authorized to conduct an excess property program subject to all requirements and limitations contained in the GSA Federal Property

Management Regulations as published in 41 CFR 101-43.320. EDA will act as a sponsor in forwarding appropriate requests for excess property to the General Services Administration for approval and processing.

(b) Any recipient of an EDA grant or any recipient of an EDA funded cost reimbursement type contract may submit a request to EDA for the use of excess property. Such requests shall be made on forms provided by EDA.

(c) The use of any excess property, made available to the recipient of an EDA grant or the recipient of an EDA funded cost reimbursement type contract pursuant to this section will be governed by a written contract between EDA and the recipient. The contract shall specify the rights and obligations of the parties and actions to be taken by the recipient in regard to the shipment, use, care, maintenance and redelivery of the property.

PART 315—CERTIFICATION AND ADJUSTMENT ASSISTANCE FOR FIRMS AND COMMUNITIES

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AUTHORITY: Sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211 et seq.); and Dept. of Commerce Organization Order 10-4 (Apr. 1, 1970) as amended (40 FR 56702 as amended at 40 FR 58878); sec. 251-274, Pub. L. 93-618, 88 Stat. 2030-2040, 19 U.S.C. 2341-2374.

SOURCE: 41 FR 52648, Dec. 1, 1976, unless otherwise noted.

Subpart A—General Provisions

§ 315.1 Purpose.

The purpose of this part is to set forth regulations implementing the responsibilities of the Secretary of Commerce under Chapters 3 and 4 of Title II, Trade Act of 1974, as delegated to the Assistant Secretary for Economic Development ("Assistant Secretary"). The Assistant Secretary has the duties of certifying firms and communities as eligible to apply for adjustment assistance, providing technical and financial adjustment assistance to eligible recipients, and studying domestic industries that are being investigated by the International Trade Commission, pursuant to Title II, to determine the number of firms in each domestic industry and the extent the existing programs may facilitate the adjustment of firms in the industry.

§ 315.2 Definitions.

(a) *General Definitions.* (1) *Commission* means the Tariff Commission of the United States of America or after January 3, 1975, the U.S. International Trade Commission, as the context requires.

(2) *Confidential business information* consists of any information that concerns or relates to trade secrets, operations and commercial or financial information, including, but not limited to, the nature, amount or source of income, profits, losses or expenditures which are obtained from any firm and which are exempted from public disclosure under 5 U.S.C. 552(b) and 15 CFR Subtitle A, Part 4.

(3) *Director* means the Director of the Office of Planning and Program Support of the Economic Development Administration.

(4) *Firm* as it applies to Subparts B, C, and D includes—

(i) Any individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustee in bankruptcy, or receiver under decree of any court.

(ii) When determined necessary by the Deputy Assistant Secretary for Economic Development Planning to prevent unjustifiable benefits, a firm, together with any predecessor or successor firm, or any affiliated firm controlled or substantially beneficially owned by the same person or persons may be considered a single firm:

(A) For purposes of the determinations regarding workers, sales and production required for certification under § 315.28, related firms may be considered a single firm only if engaged in the production or sale of the product against which the impact of imports is to be measured.

(B) For purposes of the determinations regarding access to financing through the private capital market and availability of funds from the firm's own resources required under § 315.56, related firms may be considered a single firm, except in circumstances in which it would be economically unwarranted for a related firm to provide the assistance needed because of the cost of providing such assistance in relation to any return that could reasonably be anticipated to such related firm.

(5) *Person* means an individual, firm, trust or estate.

(6) *State* includes the States of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

(7) *TACD* means the Trade Act of Certification Division of the Economic Development Administration.

(8) *Trade Act* means the Trade Act of 1974, Pub. L. 93-618, 88 Stat. 1978, 19 U.S.C. 2101 et seq.

(9) *Trade Expansion Act* means the Trade Expansion Act of 1962, 76 Stat. 872, 19 U.S.C. 1801 et seq.

(b) *Definitions Relating to Chapter 4*—(1) *Community* means an Indian tribe or political subdivision of a State, including, but not limited to, any municipality, county, parish, local government agency or general purpose subdivision of such State.

(2) *Council* means a Trade Impacted Area Council for adjustment assistance.

(3) *Employee stock ownership plan* means a plan described in section 407(d)(6) of the Employee Retirement Income Security Act of 1974, section 4975(e)(7) of the Internal Revenue Code of 1954, and in section 102(5) of the Regional Rail Reorganization Act of 1973, which meets the requirements of Title I of the Employee Retirement Income Security Act of 1974 and of Part I of Subchapter D of Chapter 1 of such code.

(4) *Equity Capital* means with respect to the recipient corporation, the sum of its money and other property (in an amount equal to the adjusted basis of such property but disregarding adjustments made on account of depreciation or amortization made during the period described in § 315.133(d)), less the amount of its indebtedness.

(5) *Qualified employer securities* means common stock issued by the recipient corporation or by a parent or subsidiary of such corporation with voting power and dividend rights no less favorable than the voting power and dividend rights on other common stock issued by issuing corporation and with voting power being exercised by the participants in the employee stock ownership plan after it is allocated to their plan accounts.

(6) *Qualified trust* means a trust established under an employee stock ownership plan and meeting the requirements of Title I of the Employee Retirement Income Security Act of 1974 and of Part I of Subchapter D of Chapter 1 of the Internal Revenue Code of 1954.

(7) *Trade impacted area* means any area within U.S. Customs territory, the size and geographical limits of which have been determined by the Deputy Assistant Secretary for Economic Development Planning of the Economic Development Administration under section 271(e) of the Trade Act.

[41 FR 52648, Dec. 1, 1976, as amended at 42 FR 59836, Nov. 22, 1977]

§ 315.3 General requirements.

Before any assistance can be extended under this part, the Assistant Secretary must determine that:

(a) The project for which assistance is sought complies with the conditions set forth in the 13 CFR 309.9, 309.11, 309.14, 309.15, and Part 310 of these regulations.

(b) The recipients of such assistance and any "other parties" as defined in 15 CFR Subtitle A, Part 8 have executed assurances of compliance with Title VI of the Civil Rights Act of 1964, as amended.

(c) Each recipient of assistance shall agree to comply with all environmental requirements, to the maximum extent possible, as determined by the Assistant Secretary, including, but not limited to:

(1) The National Environmen Policy Act of 1969, as amended (4 U.S.C. 4321 et seq.);

(2) The Clean Air Act, as amende (42 U.S.C. 1857-1858a);

(3) The Federal Water Pollutio Control Act, as amended (33 U.S. 1251-1376);

(4) The National Historic Preserv tion Act of 1966 (16 U.S.C. 470 et seq

(5) The Wild and Scenic Rivers A as amended (16 U.S.C. 1271-1287);

(6) The Endangered Species Act 1973 (16 U.S.C. 1531 et seq.);

(7) The Historical and Archeologi Data Preservation Act, as amended (U.S.C. 469 et seq.).

§ 315.4 Project modifications.

Projects receiving financial ass ance under Subparts C and F of t part and public works projects rec ing assistance under Subpart F of t part may be modified according to procedures described at 13 C 309.26.

(Sec. 701, Pub. L. 89-136, 79 Stat. 570 U.S.C. 3211); Dept. of Commerce Orga tion Order 10-4, as amended (40 FR 56702, as amended))

[43 FR 3350, Jan. 25, 1978]

Subpart B—Certification of Eligibility of Firms To Apply for Adjustment Assistance

§ 315.20 Scope.

This subpart sets forth regulations regarding the certification of eligibility of firms to apply for adjustment assistance under Chapter 3 of Title II of the Trade Act of 1974.

§ 315.21 Categories of firms requesting certification.

Firms requesting certification of eligibility to apply for adjustment assistance under Subpart C shall be classified in one of two categories:

(a) Category I includes all firms:

(1) Which have been certified eligible to apply for trade adjustment assistance under the Trade Expansion Act, but which have neither applied for nor received adjustment assistance;

(2) For which the Commission has recommended a finding of eligibility to the President but with regard to which the President has not taken action under the Trade Expansion Act; and

(3) For which the Commission has reported a tie vote to the President, with an equal number of voting commissioners favoring and opposing qualification, but with regard to which the President has not taken action.

(b) Category II includes all firms which require a determination under the Trade Act, including firms which have filed a petition with the Commission under the Trade Expansion Act but for which no determinations have been made, and firms which file an original petition under the Trade Act.

§ 315.22 Content of petitions.

(a) Category I firms requesting certification do not need to file a new petition to be eligible for assistance under Subpart C.

(b) Any Category II firm seeking original certification under this subpart shall be required to complete a detailed petition form and provide such information as identification and description of the firm (including its legal form of organization; its economic history; major ownership interests in the firm; its officers, directors and management; any parent company, subsidiary or affiliate; and its production and sales facilities); a description of goods and services produced and sold by the firm and the imported articles which are like or directly competitive with those produced by the firm; supporting data relative to the firm's sales, production and employment; the firm's financial reports; and such other information as EDA may consider material to make a determination.

§ 315.23 Acceptance of petitions.

(a) *Place of filing.* Petitions for certification of eligibility to apply for adjustment assistance may be submitted for filing by personal delivery during normal U.S. Department of Commerce business hours or by registered mail to the Trade Act Certification Division, Room 6026, Office of Planning and Program Support, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230.

(b) *Conformity with regulations.* No document purporting to be a petition for certification of eligibility to apply for adjustment assistance shall be accepted for filing unless such document is in substantial compliance with these regulations. Firms intending to submit petitions are encouraged to consult with the TACD prior to presenting such petitions for filing in order to avail themselves of guidance and assistance in the preparation and documentation of their petitions.

(c) *Confidential business information.* Business data which the petitioner or any other party desires to submit in confidence shall be submitted on separate sheets bearing at the top of each sheet the clear legend "Confidential Business Information." By submitting data identified as "Confidential Business Information," the petitioner or other party represents that such information is exempted from public disclosure, either by the Freedom of Information Act or by a specific statutory exemption. However, the TACD may refuse to accept as "confidential" any information which clearly is not intended to be protected under the law. Any information which the TACD refuses to accept as "confidential" may be submitted as nonconfidential, or may be withdrawn and will not be considered in the determination of the petition.

(d) *Review and acceptance.* EDA shall have five working days from the date on which it receives the petition to determine whether the petition has been properly prepared and can be accepted for filing. Immediately thereafter, the TACD shall notify the petitioner that the petition has been accepted or advise the petitioner that the petition has not been accepted for filing, and that the petition may be resubmitted when the specified deficiencies have been corrected. All petitions accepted for filing shall be stamped with the date on which accepted.

(e) *Publication in Federal Register.* A notice of acceptance of a petition for filing shall be published in the FEDERAL REGISTER. Such notice shall include the date of acceptance, the identity of the petitioner, the nature of its business and other pertinent information.

(f) *Withdrawal of petitions.* A petition may be withdrawn by a petitioner if a request is received by TACD before a decision under § 315.30 of this part is made on the petition. A petitioner who withdraws a petition may submit a new petition at any time thereafter in accordance with the requirements of this section.

[41 FR 52648, Dec. 1, 1976, as amended at 45 FR 74902, Nov. 15, 1980]

§ 315.24 Initiation of investigation.

(a) Upon the acceptance for filing of a petition, an investigation shall be initiated to determine, from the data and other information furnished by the petitioner and information available to EDA, whether the petitioner meets the criteria established in section 251(c) of the Trade Act and under this subpart for eligibility to apply for adjustment assistance. A report of this investigation shall become part of the record upon which a determination of the petitioner's eligibility to apply for adjustment assistance shall be made.

(b) The Deputy Assistant Secretary for Economic Development Planning may terminate an investigation at any time if he determines that the petition involved does not substantially comply with these regulations. He shall immediately notify the petitioner that the investigation has been terminated and shall specify the deficiencies in the petition causing the termination. The corrected petition may be resubmitted at any time and will be treated as a new petition.

§ 315.25 Request for public hearing.

(a) A public hearing will be held on any Category II petition accepted for filing, if such hearing is requested in writing by the petitioner. A request for a public hearing shall be filed with the Director and must be received within 10 working days after the publication in the FEDERAL REGISTER of the notice of filing of the petition under § 315.23(e).

(b) *Request by other party.* A public hearing will also be held on any petition, if requested in a timely manner by any person, organization or group demonstrating a substantial interest in the proceedings. A request for a public hearing by a party other than the petitioner shall be filed with the Director, and must be received within ten (10) working days after the publication in the FEDERAL REGISTER of the notice of filing of the petition under § 315.23(e). Such request must be in writing, delivered by hand or by registered mail, and must contain:

(1) The name, address and telephon number of the person, organization o group requesting the hearing;

(2) A complete statement of the relationship of the person, organization o group requesting the hearing to th petitioner or the subject matter of th petition and a statement of the natur of its interests in the proceeding, i cluding how such interest may be a fected by certification or noncertific tion of the petitioner's eligibility apply for adjustment assistance; and

(3) A summary of the nature of t evidence or other information that desires to submit at the public hea ing.

For purposes of this section, a perso organization or group will be deem to have a "substantial interest in t proceedings" if it has included sufficient information in its request to demonstrate to the satisfaction of the Director that it has a direct, material economic interest which will be, or may be, affected by certification or denial of certification of petitioner's eligibility to apply for adjustment assistance.

(c) *Denial of request by other party.* In the event of a denial of a request for a public hearing, a written notice thereof by the Deputy Assistant Secretary for Economic Development Planning shall be sent to the requesting party. Such notice shall specify the reasons upon which the denial is based. In view of the sixty day period under section 251(d) of the Trade Act for processing petitions for certification of eligibility to apply for adjustment assistance, there shall be no appeal from such a denial.

§ 315.26 Notice of hearing.

The Director shall publish notice of the public hearing in the FEDERAL REGISTER. The notice shall include the subject matter of the application, and the date, time and place at which the opportunity to be heard shall be afforded, and other pertinent information.

§ 315.27 Conduct of hearing.

(a) *Attendance at hearing.* Each person who wishes to be heard shall notify the Director within five (5) days after the date of the notice described in § 315.26 of his intention to attend and shall submit the numbers and names of the witnesses he wishes to present.

(b) *Presiding officer.* The presiding officer of the hearing shall be appointed by the Assistant Secretary.

(c) *Hearing rules*—(1) *Order of presentation*—(i) *Opening statements.* The petitioner and each other approved participant may make opening statements of a length within the discretion of the presiding officer. Such opening statements should concisely state what the participant intends to show. The petitioner shall have the opportunity to present his statement first.

(ii) *Petitioner's presentation.* Following the opening statements, the petitioner shall present his data and materials, oral or documentary.

(iii) *Protestant's presentation.* Following the petitioner's presentation, the persons protesting the petition shall present their data and materials, oral or documentary. The protestants may agree, with the approval of the presiding officer, to have one of their number make their presentation.

(iv) *Other interested persons.* Following the evidence of the petitioner and the protestant, the presiding officer at his discretion may recognize other interested persons who may present their views with respect to the petition under consideration.

(v) *Summary statements.* After all of the above presentations have been concluded, the participants may make short and concise summary statements reviewing their position. The petitioner shall present his concluding summary statement first.

(2) *Witnesses.* The obtaining and use of witnesses is the responsibility of the parties. All witnesses will be presented of their own volition, but any person appearing as a witness may be subject to questioning by any approved participant, or by the presiding officer. The refusal of a witness to answer questions may be considered in determining the weight to be accorded the testimony of that witness.

(3) *Evidence.* The presiding officer shall have the authority to exclude data or materials which he deems to be improper or irrelevent. Formal rules of evidence shall not be applicable to these hearings. Documentary material must be of a size consistent with ease of handling, transportation, and filing, and copies must be provided for each approved participant. While large exhibits may be used during the hearing, copies of such exhibits must be provided by the party in reduced size for submission as evidence. Two copies of all such documentary evidence shall be furnished to the presiding officer, and one copy shall be furnished to such other persons as have a legitimate interest therein as determined by the presiding officer.

(4) *Procedural questions.* The presiding officer shall determine all procedural questions not governed by this part. The presiding officer shall have

the authority to limit the number of witnesses to be used by any party, and to impose such time limitations as he shall deem reasonable.

(5) *Transcript.* A transcript of each proceeding shall be arranged for by the presiding officer. Interested parties may examine the transcripts and exhibits or other materials presented, and obtain copies thereof by making application in accordance with the public information procedures of 13 CFR Part 301, Subpart D, Disclosure of Information to the Public. Confidential business information shall not be a part of the transcripts.

(6) *Confidential business information.* Any confidential business information may be submitted by any approved participant directly to the presiding officer prior to the hearing. Such information shall be labeled "Confidential Business Information." For the purpose of the public record, a brief description of the nature of the information shall be submitted to the presiding officer during the hearing.

§ 315.28 Criteria for certification.

(a) A petitioning firm whose Category II petition has been accepted for filing will be certified eligible to apply for adjustment assistance if the Deputy Assistant Secretary for Economic Development Planning determines, under section 251(c) of the Trade Act, that:

(1) A significant number or proportion of the workers in such firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) Sales or production, or both, of such firm have decreased absolutely; and

(3) Increases of imports (absolute or relative to domestic production) of articles like or directly competitive with articles produced by such firm contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

(b) For purposes of this part:

(1) A "significant number or proportion of workers" shall normally mean the equivalent of a total separation of five percent of the firm's work force or fifty workers, whichever is less. In computing such equivalent, partially separated workers shall be taken into account in proportion to their percentage of separation. With regard to agricultural operations that are sole proprietorships, the criterion may be met by an individual farmer;

(2) A "totally separated worker" means an employee who has been laid off or whose employment has been terminated by his employer for lack of work;

(3) "Partial separation" means a reduction in an employee's hours of work to eighty percent or less of the employee's average weekly hours or a reduction in the employee's weekly wage to eighty percent or less of the employee's average weekly wage;

(4) A group of workers shall be considered to be "threatened" with total or partial separation if there is reasonable evidence that such total or partial separation is imminent;

(5) The term "decreased absolutely" is used in reference to petitioner's sales or production irrespective of industry or market fluctuations and relative only to the previous performance of the firm;

(6) The terms "like" and "directly competitive" are not synonymous. "Like" articles are those articles which are substantially identical in inherent or intrinsic characteristics. "Directly competitive" articles are those articles which are not substantially identical in inherent or intrinsic characteristics, but are substantially equivalent for commercial purposes, i.e., are adapted to the same function or use and are essentially interchangeable; and

(7) The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause. Imports will be considered to have "contributed importantly" to total or partial separation or threat thereof, of a significant number or proportion of workers, and to a decline in sales or production, even if such imports were not the major factor in effecting such separation, threat thereof, and decrease. In determining whether imports contributed importantly among possible causes for separation or decreases, the influence of imports as a cause will be considered on the basis of the totality

and interrelationship of all possible causes.

(c) In all cases, although EDA will assist the petitioner to demonstrate his meeting the criteria for certification of eligibility to apply for adjustment assistance under paragraph (a) of this section, the burden of proof is upon the petitioner to establish his eligibility by the submission of probative evidence.

[41 FR 52648, Dec. 1, 1976, as amended at 42 FR 59837, Nov. 22, 1977]

§ 315.29 The record.

The record shall consist of the petition for certification of eligibility to apply for adjustment assistance submitted by the applicant under § 315.22(b), any confidential business information submitted under § 315.23(c), the investigation report required by § 315.24 and such other relevant information that may be developed during the investigation, and, in the event that a public hearing is held, all evidence submitted pursuant to § 315.27(c)(3), the transcript described in § 315.27(c)(5) and confidential business information submitted under § 315.27(c)(6).

§ 315.30 Decision of the Deputy Assistant Secretary for Economic Development Planning.

(a) The Deputy Assistant Secretary for Economic Development Planning shall make a determination based on the record as soon as possible after all of the material constituting the record has been submitted. In no event may the period exceed sixty days from the date on which the petition was accepted for filing.

(b) The Deputy Assistant Secretary for Economic Development Planning shall either certify the petitioner eligible to apply for adjustment assistance or shall deny the petition and, in either event, shall promptly notify the petitioner in writing of his action. Notices of denials of petitions shall specify the reasons upon which the denial is based. Denials shall be either (1) on the merits or (2) procedural. If there is a procedural denial of a petition, the petitioner is entitled to resubmit its petition and any further evidence in support thereof at any time. If a petition is denied on the merits, the petitioner shall not be entitled to resubmit its petition for certification to apply for adjustment assistance within the twelve month period succeeding the date of the denial. All denials shall be on the merits, unless TACD determines that there exists an unusual circumstance, factual situation, or potential source of information that justifies an opportunity for the petitioner to resubmit its petition within a period of less than one year from the date of denial.

§ 315.31 Appeals.

Any petitioner may appeal to the Assistant Secretary from a denial of certification of eligibility to apply for adjustment assistance, provided that such appeal is received in writing and in triplicate by personal delivery or by registered or certified mail, by the Director, Office of Planning and Program Support, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, within sixty days from the date of the formal notice of denial of the petition issued under § 315.30. The appeal shall set forth the grounds upon which the appeal is based and a concise statement of the facts and circumstances or legal arguments asserted by the petitioner in support thereof. The decision of the Assistant Secretary shall be final within the Department and shall be provided in writing to the petitioner as promptly as practicable.

§ 315.32 Revocation of certification.

The Deputy Assistant Secretary for Economic Development Planning may terminate the certification of eligibility to apply for adjustment assistance of any firm pursuant to section 252(d) of the Trade Act or if it is later determined that there was not an adequate statutory basis for the firm to be certified as eligible to apply for adjustment assistance. Notice of such termination shall be published in the FEDERAL REGISTER and such termination shall take effect on the date specified by the Deputy Assistant Secretary for Economic Development Planning.

Subpart C—Adjustment Assistance for Firms

§ 315.50 Scope.

This subpart sets forth the requirements and procedures pursuant to which eligible firms may receive adjustment assistance under Chapter 3 of Title II of the Trade Act of 1974.

§ 315.51 Application for assistance.

(a) A firm certified as eligible to apply for adjustment assistance may, at any time within two years after the date of such certification, file an application with the Assistant Secretary for adjustment assistance under this subpart. Applications may be filed after the expiration of such two-year period only when filed in accordance with an amendment, approved by the Assistant Secretary, to a firm's adjustment proposal which proposal has been accepted by the Assistant Secretary within two years after the date of certification. Applications shall be made on forms provided by the Assistant Secretary and shall contain such financial and supportive information as the Assistant Secretary may require.

(b) Such application, except in the case of an application for technical assistance to be used for preparing an adjustment proposal, shall include a proposal for the economic adjustment of such firm. The adjustment proposal shall contain the following information:

(1) *Material contribution to economic adjustment.* An adjustment proposal must demonstrate that the assistance sought therein will be a constructive aid to the firm in establishing a competitive position in the same or a different industry. If specifically requested by the Assistant Secretary, the firm certified as eligible to apply for adjustment assistance shall provide the following information in the manner and form prescribed by the Assistant Secretary:

(i) Data on productive capacity, raw material and energy supplies for current and proposed production of existing and proposed product lines;

(ii) Market plans and domestic market share data of existing and proposed product lines;

(iii) Projected statements of financial position, income and cash flow with underlying assumptions utilized in the preparation of such statements with respect to future period operations;

(iv) Data as to character, financial standing and capability of management, and additionally for the proprietor, partners or shareholders of closely-held entities;

(v) Latest financial position statements and federal tax returns of the firm as defined in § 315.2(a)(4) and parties noted in paragraph (b)(1)(iv) at this section;

(vi) Certifications, plans, analyses and/or other relevant data if such are required by the Assistant Secretary for statutory findings that the firm's adjustment proposal complies with Pub. L. 90-480; the Clean Air Act, as amended; the Federal Water Pollution Control Act, as amended; the Flood Disaster Protection Act of 1973; the Wild and Scenic Rivers Act, as amended; the National Environmental Policy Act of 1969, as amended; the National Historic Preservation Act of 1966; the Civil Rights Act of 1964; Executive Order 11246; and the Davis-Bacon Act.

(2) *Consideration to the interests of workers.* An adjustment proposal must give adequate consideration to the interests of the workers of such firm adversely affected as the result of the serious injury or threat thereof to such firm. Among reasonable alternatives adjustment proposals that provide fo the rehiring of such workers who hav been laid off due to the increased imports are preferred. Efforts by th firm to find new employment for suc laid off workers or assistance rendere to such workers under Governme programs will also be taken into count in evaluating a proposal.

(3) *Reasonable efforts by the firm use its own resources.* An adjustme proposal must demonstrate that firm will make maximum use of own resources and that any funds quested are not otherwise available the firm, from sources other than Federal Government, on reasona terms. The firm's own resources clude the total resources availa from all affiliated firms or related tities under the ownership and con

of substantially the same persons, except in circumstances in which it would be economically unwarranted for such affiliated firms or related entities to provide the assistance needed because of the cost of providing such assistance in relation to any return that could reasonably be anticipated to such affiliated firms or related entities. Under certain circumstances, as in the case of a closely held corporation, the firm's resources may extend to the personal resources of shareholders. Evidence required as to the availability of funds shall be in the form and manner as prescribed by the Assistant Secretary.

(c) The Assistant Secretary may furnish technical assistance to any firm which has been certified as eligible to apply for adjustment assistance under this subpart in order to assist it in preparing a viable adjustment proposal.

[41 FR 52648, Dec. 1, 1976, as amended at 42 FR 59837, Nov. 22, 1977; 42 FR 62904, Dec. 14, 1977]

§ 315.52 Approval of applications.

(a) An application for adjustment assistance will be accepted for filing only if it has been properly prepared and contains an adequate adjustment proposal and such other information as may be required by the Assistant Secretary under § 315.51. EDA shall have five working days from the date on which it receives the application to determine whether the application has been properly prepared and can be accepted for filing. Immediately after the five working days have elapsed the Assistant Secretary shall notify the applicant that the application has been received, and advise the applicant that:

(1) The application has been accepted for filing; or

(2) The application may be resubmitted when the specified deficiencies have been corrected. If any deficiency has not been corrected by the firm within thirty days after written notification by the Assistant Secretary, the Assistant Secretary may terminate the firm's priority processing rights as provided for in § 315.58 and further require that such firm submit a new application.

(b) The Assistant Secretary shall make a final determination on the prospective project within 60 days after a proper application has been accepted for filing. However, if the Assistant Secretary discovers in subsequent reviews, after the firm's application has been accepted for filing, that the application contains misrepresentations and/or inaccuracies in any application document, then the Assistant Secretary reserves the right to apply on a retroactive basis the provisions contained in paragraph (a)(2) of this section.

§ 315.53 Types of adjustment assistance.

Adjustment assistance under this subpart consists of technical assistance and financial assistance, which may be furnished singly or in combination.

§ 315.54 Technical assistance.

(a) The Assistant Secretary may provide a firm certified under Subpart B or under 15 CFR Part 350, on such terms and conditions as he determines to be appropriate, such technical assistance as in his judgment will carry out the purpose of this subpart with respect to such firm.

(b)(1) Technical assistance may be provided under this subpart in order to assist a firm in—

(i) Developing a proposal for its economic adjustment;

(ii) Implementing such a proposal; or

(iii) Both.

(2) Technical assistance extended under paragraph (b)(1) of this section may include assistance to study a specific energy related problem in the context of the adjustment needs of the applicant.

(c) The Assistant Secretary shall furnish technical assistance under this section through existing agencies and through private individuals, firms, and institutions.

(d) The Federal share of technical assistance furnished through private individuals, firms, and institutions, including private consulting services, shall not exceed 75 percent of the total amount of the funds required.

(1) Firms applying for technical assistance are expected to share the cost

of such assistance to the extent possible.

(2) The Assistant Secretary may waive all or part of the 25 percent non-Federal share at the time the technical assistance is provided if he determines—

(i) That the firm cannot afford to pay its share of the cost; and

(ii) There is adequate provisions for repayment of at least 25 percent of the total cost of the technical assistance.

[41 FR 52648, Dec. 1, 1976, as amended at 45 FR 57964, Aug. 29, 1980]

§ 315.55 Financial assistance.

(a) The Assistant Secretary may provide to a firm certified under Subpart B or under 15 CFR Part 350, on such terms and conditions as he determines to be appropriate, such financial assistance in the form of direct loans or guarantees of loans as in his judgment will materially contribute to the economic adjustment of the firm.

(1) The assumption of an outstanding indebtedness of the firm, with or without recourse, shall be considered to be the making of a loan for purposes of this section.

(b) Loans or guarantees of loans shall be made under this subpart only for the purpose of making funds available to the firm—

(1) For acquisition, construction, installation, modernization, development, conversion or expansion of land, plants, buildings, equipment, facilities or machinery and, in otherwise eligible projects, for costs associated with incorporating energy conserving features into facilities and production processes. Applicants must demonstrate that the incorporation of the proposed features for which assistance is being requested will result in the more efficient use of non-renewable energy sources and/or the use of renewable sources of energy.

(2) To supply such working capital as may be necessary to enable the firm to implement its adjustment proposal.

[41 FR 52648, Dec. 1, 1976, as amended at 45 FR 57964, Aug. 29, 1980]

§ 315.56 Eligibility for financial assistance.

(a) No financial assistance shall be provided under § 315.55 unless the Assistant Secretary determines:

(1) That the funds are not available from the firm's own resources;

(2) That in accordance with the provisions of § 315.51(b)(3), the firm has no reasonable access to financing through private sectors; and

(3) That there is reasonable assurance of repayment of the loan. For this purpose, the applicant shall comply with the provisions of 13 CFR 306.9 except that the requirement in paragraph (a)(6) pertaining to the repayment of debt principal within three years shall not apply to Trade Act assistance.

(b) To the extent that loan funds can be obtained from private sources, with or without a guarantee, at the rate provided in § 315.57, no direct loan shall be provided to a firm under § 315.55.

(c) Funds will not be considered available from the firm's own resources or from private sources by reason of such funds being available from a related firm of the firm applying for assistance in circumstances where it would be economically unwarranted for the related firm to provide the assistance needed because of the cost of providing such assistance in relation to any return that could reasonably be anticipated to such related firm.

[41 FR 52648, Dec. 1, 1976, as amended at 42 FR 59837, Nov. 22, 1977; 42 FR 62904, Dec. 14, 1977]

§ 315.57 Interest rates.

(a) The rate of interest on loans which are guaranteed under this subpart shall be no higher than the maximum interest per annum that a participating financial institution may establish on guaranteed loans made pursuant to section 7(a) of the Small Business Act (15 U.S.C. 636(a)).

(b) The rate of interest on direct loans made under this subpart shall be—

(1) A rate determined by the Secretary of the Treasury taking into consideration the current average market

yield on outstanding marketable obligations of the United States with remaining periods to maturity that are comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 percent; plus

(2) An amount adequate in the judgment of the Assistant Secretary to cover administrative costs and probable losses under the program.

§ 315.58 Priorities.

The Assistant Secretary shall give priority to firms which are small within the meaning of the Small Business Act (and regulations promulgated in 13 CFR Chapter I, Part 121) in making direct loans and loan guarantees.

§ 315.59 Limitations.

(a) The Assistant Secretary shall make no loan or guarantee of a loan having a maturity in excess of 25 years, including renewals and extensions. Such limitations on maturities shall not, however, apply to—

(1) Securities or obligations received by the Assistant Secretary as claimant in bankruptcy or equitable reorganization, or as creditor in other proceedings attendant upon insolvency of the obligator; or

(2) An extension or renewal for an additional period not exceeding 10 years, if the Assistant Secretary determines that such extension or renewal is reasonably necessary for the orderly liquidation of the loan.

(b) No loan shall be guaranteed by the Assistant Secretary in an amount which exceeds 90 percent of the balance of the loan outstanding.

(c) The aggregate amount of loans made to any firm which are guaranteed under this subpart and which are outstanding at any time shall not exceed $3,000,000. The amount of loans made to any firm which may be guaranteed under this subpart shall be reduced by the aggregate amount of outstanding loans to such firm which are guaranteed by the Trade Expansion Act.

(d) The aggregate amount of direct loans made to any firm under this subpart which are outstanding at any time shall not exceed $1,000,000. The amount of direct loans which may be made to any firm under this subpart shall be reduced by the aggregate amount of direct loans made under the Trade Expansion Act which are outstanding.

§ 315.60 Operating reserves.

The Assistant Secretary shall maintain operating reserves with respect to anticipated claims under guarantees made under this subpart. Such reserves shall be considered to constitute obligations for purposes of section 1311 of the Supplemental Appropriation Act, 1955 (31 U.S.C. 200).

§ 315.61 Fees.

The Assistant Secretary may charge a fee to a lender which makes a loan guaranteed under this subpart in such amount as is necessary to cover the cost of administration of such guarantee.

[42 FR 12420, Mar. 4, 1977]

§ 315.62 Administration of financial assistance.

(a) In making and administering guarantees and loans under this subpart, the Assistant Secretary may—

(1) Require security for any such guarantee or loan, and enforce, waive, or subordinate such security;

(i) Personal guarantees will be required only when necessary to assure the continued interest and effort of the borrower's owners or management on behalf of the borrower.

(2) Assign or sell at public or private sale, or otherwise dispose of, upon such terms and conditions and for such consideration as he shall determine to be reasonable, any evidence of debt, contract, claim, personal property or security assigned to or held by him in connection with such guarantees or loan;

(3) Collect, compromise, and obtain deficiency judgments with respect to all obligations assigned to or held by him in connection with such guarantees or loans until such time as such obligations may be referred to the Attorney General for suit or collection;

(4) Renovate, improve, modernize, complete, insure, rent, sell, or otherwise deal with, upon such terms and conditions and for such consideration

as he shall determine to be reasonable, any real or personal property conveyed to or otherwise acquired by him in connection with such guarantees or loans;

(5) Acquire, hold, transfer, release, or convey any real or personal property or any interest therein whenever deemed necessary or appropriate, and execute all legal documents for such purposes; and

(6) Exercise all such other powers and take all such other acts as may be necessary or incidental to the carrying out of functions pursuant to this subpart.

(b) Any mortgage acquired as security under paragraph (a) of this section shall be recorded under applicable State law.

(c) All repayments of loans, payments of interest, and other receipts arising out of transactions entered into by the Assistant Secretary pursuant to this subpart, shall be available for financing functions performed under this subpart, including administrative expenses in connection with such functions.

[41 FR 52648, Dec. 1, 1976, as amended at 42 FR 59837, Nov. 22, 1977]

§ 315.63 Delegation of functions to SBA.

In case of any firm which is small within the meaning of the Small Business Act (and regulations promulgated in 13 CFR Chapter I, Part 121) the Assistant Secretary may delegate all of his functions under this subpart to the Administrator of the Small Business Administration.

§ 315.64 Transitional provisions.

Any firm whose adjustment proposal was certified under section 311 of the Trade Expansion Act before the effective date of this part may receive assistance at the level set forth in such certified proposal.

§ 315.65 Employment of expediters or administrative employees; compensation of persons engaged by or on behalf of applicants.

(a) No adjustment assistance under this Part shall be extended to any firm unless the owners, partners, or officers of the firm certify to the Assistant Secretary the names of any attorneys, agents, or other persons engaged by or on behalf of the firm for the purpose of expediting applications for such adjustment assistance, and the fee paid or to be paid to any such persons.

(b) No financial assistance under this part shall be extended to any firm unless the owners, partners, or officers of the firm execute an agreement to refrain from employing, tendering any office or employment to, or retaining for professional services any person who, on the date such financial assistance or any part thereof was provided, or within one year prior thereto, shall have served as an officer, attorney, agent, or employee occupying a position or engaging in activities which the Assistant Secretary shall have determined involved discretion with respect to the provision of such financial assistance. Such agreement will be binding on the applicant for a period of two years after the financial assistance is rendered.

§ 315.66 Environmental considerations.

(a) *The National Environmental Policy Act.* (1) Since the Trade Act of 1974 requires applications for adjustment assistance to firms to be processed within 60 days of their acceptance, EDA will not be able to prepare environmental impact statements for those projects which may significantly affect the quality of the human environment. However, to the fullest extent possible within this time period, EDA will analyze a project's potential environmental impacts and give appropriate consideration to environmental impacts in making its final decision.

(2) In order that EDA may conduct its environmental analysis of proposed projects, applicants shall include the following materials with their application, except with respect to paragraphs (a)(2) (iii) and (iv) of this section if such materials are not available in which case the applicant must so certify:

(i) A description of those elements of the proposed project which will have an impact on the environment, the nature of the environment which will be affected; and data on the expected environmental impact;

(ii) Alternatives to the proposed project;

(iii) Any environmental analysis previously conducted by local, State, and Federal agencies; and

(iv) Evidence of public reaction to the project, such as transcripts of local public hearings held on the proposal.

(3) EDA will independently review and analyze environmental information submitted by applicants.

(i) Where appropriate, EDA, within the 60 day limit, may seek the views of other government agencies which have jurisdiction by law or special expertise with respect to any environmental impact involved.

(ii) If a project appears to be highly controversial for environmental reasons and there is a need to further understand the basis of the controversy, EDA may, within the 60 day limit, request the views of concerned residents through a newspaper notification or a public information meeting held near the project site.

(4) EDA shall deny an application if, after consideration of the benefits of a project against any environmental costs, it concludes that the environmental costs exceed the benefits. EDA may deny any application solely on the basis that its environmental impact analysis discloses that unacceptable adverse impacts will or are likely to result. EDA, where necessary, may condition approval of a project upon the adoption of specified measures designed to mitigate any adverse environmental impacts.

(b) *The National Historic Preservation Act.* (1) Applicants shall include with their applications either a statement of their State Historic Preservation Officer's views of the proposed project or shall certify that their State Historic Preservation Officer was provided with a detailed project description and request for comments prior to application's submission to EDA.

(2) If necessary, EDA will attempt to complete the coordination of proposed projects with the Advisory Council on Historic Preservation. EDA will use the results of this coordination process, even though completion of this process may not be possible, as a factor in making a final decision on the project.

Subpart D—Study of Firms in an Industry Which Is the Subject of an Investigation of Injury or Threat of Injury by the International Trade Commission

§ 315.80 EDA study.

(a) *Initiation of the Study.* Upon notification by the Commission of the commencement of an investigation under section 201 of the Trade Act with respect to injury to a domestic industry occurring as a result of the increased importation of articles into the United States that are like or directly competitive with articles produced by the domestic industry, the Assistant Secretary shall immediately cause a study to be undertaken under section 264 of the Trade Act of:

(1) The number and identity of firms in the domestic industry producing the like or directly competitive article which have been or are likely to be certified eligible to apply for adjustment assistance under section 251 of the Trade Act and this part, and

(2) The extent to which the orderly adjustment of firms in the domestic industry to import competition may be facilitated through the use of existing programs.

(b) *Report.* Upon completion of the study described in paragraph (a) of this section, and within fifteen days of the date on which the Commission makes its report to the President of the United States under section 201 of the Trade Act the Assistant Secretary shall report to the President the findings and conclusions of the study. As soon thereafter as practicable the Assistant Secretary shall make his report public (with the exception of confidential business information that is exempted by law from public disclosure).

§ 315.81 Information on adjustment assistance programs.

Upon a report of the Commission to the President of an affirmative finding of injury or threat of injury to an industry under section 201(b) of the Trade Act, the Assistant Secretary shall make available to firms in such industry, to the extent feasible, information about programs that may facilitate their orderly adjustment to import competition and shall, through the agencies of the Department designated by him, provide assistance in the preparation and processing of petitions and applications for such assistance.

Subpart E—Certification of Eligibility of Communities To Apply for Adjustment Assistance

§ 315.90 Scope.

This subpart sets forth regulations regarding the certification of eligibility of communities to apply for adjustment assistance under Chapter 4 of Title II of the Trade Act of 1974.

§ 315.91 Petitions for certification.

A petition for certification of eligibility for adjustment assistance may be filed by a community or group of communities, or on behalf of a community by the Governor of the State in which such community or group of communities are located.

§ 315.92 Form and content of petition.

Any community or group of communities seeking certification under this subpart shall be required to complete a petition form, which shall provide, among other matters, identification of and information on its officials, data on its demography, information concerning the total sales, employment and production of firms within the community, and the firms or subdivisions of firms within the community that have been import-impacted or have transferred to a foreign country. For each firm so identified, information shall be required concerning the goods and services produced and sold by the firm and the imported articles which are like or directly competitive with those produced; the firm's sales, production and employment; and such other information as EDA may consider material to make a determination.

§ 315.93 Acceptance of petitions.

(a) *Place of filing.* Community petitions for certification of eligibility to apply for adjustment assistance may be submitted for filing by personal delivery during normal U.S. Department of Commerce business hours or by registered mail to the appropriate Regional Office of the Economic Development Administration. The petitioner will submit four copies of the petition (Form ED-437) to the Regional Office and one copy to the Trade Act Certification Division, Room 6026, Office of Planning and Program Support, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230.

(b) *Conformity with regulations.* No document purporting to be a community petition for certification of eligibility to apply for adjustment assistance shall be accepted for filing unless such document is in substantial compliance with these regulations. Communities intending to submit petitions are encouraged to consult with the appropriate Regional Office prior to presenting such petitions for filing in order to avail themselves of guidance and assistance in the preparation and documentation of their petitions.

(c) *Confidential business information.* Business data which the petitioner or any other party desires to submit in confidence shall be submitted on separate sheets bearing at the top of each sheet the clear legend "Confidential Business Information." By submitting data identified as "Confidential Business Information," the petitioner or other party represents that such information is exempted from public disclosure, either by the Freedom of Information Act or by a specific statutory exemption. However, the TACD may refuse to accept as "confidential" any information which clearly is not intended to be protected under the law. Any information which the TACD refuses to accept as "confidential" may be submitted as nonconfidential, or may be withdrawn and will not be considered in the determination of the petition.

(d) *Review and acceptance.* EDA shall have seven working days from the date on which it receives the community petition to determine whether the petition has been properly prepared and can be accepted for filing. Immediately thereafter, the TACD shall notify the petitioner that the petition has been accepted, or advise the petitioner that the petition has not been accepted for filing, and that the petition may be resubmitted when the specified deficiencies have been corrected. All petitions accepted for filing shall be stamped with the date on which accepted.

(e) *Publication in Federal Register.* A notice of acceptance of a petition for filing shall be published in the FEDERAL REGISTER. Such notice shall include the date of acceptance, the identity of the petitioner, the community or communities on whose behalf the petition has been filed, the basis of the petition, and any other pertinent information.

(f) *Withdrawal of petitions.* A petition may be withdrawn by a petitioner if a written request is received by the TACD before a decision under § 315.100 is made on the petition. A petitioner who withdraws a petition may at any time thereafter submit a new petition in accordance with this section.

§ 315.94 Initiation of investigation.

(a) Upon the acceptance for filing of a petition, an investigation shall be initiated to determine, from the data and other information furnished by the petitioner and information available to EDA, whether the community or communities meet the criteria established in section 271(c) of the Trade Act and under this subpart for eligibility to apply for adjustment assistance. In addition, the geographic boundaries of the Trade Impacted Area or Areas in which such community or communities are located shall be determined. A report of this investigation shall become part of the record upon which a determination of the eligibility of the community or communities to apply for adjustment assistance shall be made.

(b) The Deputy Assistant Secretary for Economic Development Planning may terminate an investigation at any time if he determines that the petition involved does not substantially comply with these regulations. He shall immediately notify the petitioner that the investigation has been terminated and shall specify the deficiencies in the petition causing the termination. The corrected petition may be resubmitted at any time and will be treated as a new petition.

§ 315.95 Request for public hearing.

(a) A public hearing will be held on any petition accepted for filing, if such hearing is requested in writing by the petitioner. A request for a public hearing shall be filed with the Director and must be received within 10 working days after the publication in the FEDERAL REGISTER of the notice of filing of the petition under § 315.93(e).

(b) *Request by other party.* A public hearing will also be held on any petition, if requested in a timely manner by any person, organization or group, or representative of a community not included in the petition who has demonstrated that it has substantial interest in the proceedings. A request for a public hearing by a party other than the petitioner shall be filed with the Director, and must be within ten (10) working days after the publication in the FEDERAL REGISTER of the notice of filing of the petition under § 315.93(e). Such request must be in writing, delivered by hand or by registered mail, and must contain:

(1) The name, address and telephone number of the person, organization or group, or of the legal representative or senior administrative officer of the community requesting the hearing;

(2) A complete statement of the relationship of the person, organization or group, or representative of a community requesting the hearing to the petitioner or the subject matter of the petition and a statement of the nature of its interest in the proceedings, including how such interest may be affected by certification or non-certification of the petitioner's eligibility to apply for adjustment assistance; and

(3) A summary of the nature of the evidence or other information that it desires to submit at the public hearing.

For purposes of this section, a person, organization or group, or representative of a community not included in the petition, will be deemed to have a "substantial interest in the proceedings" if it has included sufficient information in its request to demonstrate to the satisfaction of the Director that it has a direct, material, economic interest which will be, or may be, affected by certification or denial of certification of petitioner's eligibility to apply for adjustment assistance.

(c) *Denial of request by other party.* In the event of a denial of a request for a public hearing, a written notice thereof from the Deputy Assistant Secretary for Economic Development Planning shall be sent to the requesting party. Such notice shall specify the reasons upon which the denial is based. In view of the sixty day period under section 271(d) of the Trade Act for processing petitions for certification of eligibility to apply for adjustment assistance, there shall be no appeal from such a denial.

§ 315.96 Notice of hearing.

The Director shall publish notice of the public hearing in the FEDERAL REGISTER. The notice shall include the subject matter of the application, and the date, time and place at which the opportunity to be heard shall be afforded, and other pertinent information.

§ 315.97 Conduct of hearing.

(a) *Attendance at hearing.* Each person who wishes to be heard shall notify the Director within five (5) days after the date of the notice described in § 315.96 of his intention to attend and shall submit the number and names of witnesses he wishes to present.

(b) *Presiding officer.* The presiding officer of the hearing shall be appointed by the Assistant Secretary.

(c) *Hearing Rules*—(1) *Order of presentation*—(i) *Opening statements.* The petitioner and each other approved participant may make opening statements of a length within the discretion of the presiding officer. Such opening statements should concisely state what the participant intends to show. The petitioner shall have the opportunity to present his statement first.

(ii) *Petitioner's presentation.* Following the opening statements, the petitioner shall present his data and materials, oral or documentary.

(iii) *Protestant's presentation.* Following the petitioner's presentation, the persons protesting the petition shall present their data and materials, oral or documentary. The protestants
may agree, with the approval of t
presiding officer, to have one of the
number make their presentation.

(iv) *Other interested persons.* Follo
ing the evidence of the petitioner a
the protestant, the presiding officer
his discretion may recognize other
terested persons who may prese
their views with respect to the petiti
under consideration.

(v) *Summary statements.* After
the above presentations have be
concluded, the participants may m
short and concise summary stateme
reviewing their position. The petiti
er shall present his concluding s
mary statement first.

(2) *Witnesses.* The obtaining and
of witnesses is the responsibility of
parties. All witnesses will be presen
of their own volition, but any per
appearing as a witness may be sub
to questioning by any approved pa
ipant, or by the presiding officer.
refusal of a witness to answer q
tions may be considered in deter
ing the weight to be accorded the
timony of that witness.

(3) *Evidence.* The presiding of
shall have the authority to exc
data or materials which he deem
be improper or irrelevant. Fo
rules of evidence shall not be app
ble to these hearings. Documen
material must be of a size consis
with ease of handling, transporta
and filing, and copies must be prov
for each approved participant. W
large exhibits may be used durin
hearing, copies of such exhibits
be provided by the party in red
size for submission as evidence.
copies of all such documentary
dence shall be furnished to the p
ing officer, and one copy shall be
nished to such other persons as h
legitimate interest therein as d
mined by the presiding officer.

(4) *Procedural questions.* The p
ing officer shall determine all p
dural questions not governed by
part. The presiding officer shall
the authority to limit the numb
witnesses to be used by any party
to impose such time limitations
shall deem reasonable.

(5) *Transcript.* A transcript of
proceeding shall be arranged f
the presiding officer. Interested

ties may examine the transcripts and the exhibits or other materials presented, and obtain copies thereof by making application in accordance with the public information procedures of 13 CFR Part 301, Subpart D, Disclosure of Information to the Public. Confidential business information shall not be a part of the transcripts.

(6) *Confidential business information.* Any confidential business information may be submitted by any approved participant directly to the presiding officer prior to the hearing. Such information shall be labelled "Confidential Business Information." For the purpose of the public record, a brief description of the nature of the information shall be submitted to the presiding officer during the hearing.

§ 315.98 Criteria for certification.

(a) The community or group of communities included in the petition will be certified eligible to apply for adjustment assistance if the Deputy Assistant Secretary for Economic Development Planning determines, under section 271(c) of the Trade Act, that such community or group of communities are located in a Trade Impacted Area in which:

(1) A significant number or proportion of the workers have become totally or partially separated, or are threatened to become totally or partially separated;

(i) For purposes of this subsection, the term "significant number or proportion of the workers" shall mean 200 employees or 5 percent of the total employment force of a Trade Impacted Area.

(2) Sales or production, or both, of firms or subdivisions of firms located in such Trade Impacted Area have decreased absolutely; and

(i) For purposes of this subsection, the term "firms or subdivisions of firms" shall mean those firms or subdivisions of firms employing the significant number or proportion of the workers referred to in paragraph (a)(1) of this section.

(3) Increases of imports (absolute or relative to domestic production) of articles like or directly competitive with articles produced by firms or subdivisions of firms located in such Trade Impacted Area, or the transfer of firms or subdivisions of firms located in such Trade Impacted Area to foreign countries, have contributed importantly to such total or partial separation, or threat thereof, and to the decline in sales and/or production.

(b) For purposes of this part:

(1) A "totally separated worker" means an employee who has been laid off or whose employment has been terminated by his employer for lack of work.

(2) "Partial separation" means a reduction in an employee's hours of work to eighty percent or less of the employee's average weekly hours or a reduction in the employee's weekly wage to eighty percent or less of the employee's average weekly wage.

(3) A group of workers shall be considered to be "threatened" with total or partial separation if there is reasonable evidence that such total or partial separation is imminent.

(4) The term "subdivision of firm" means an establishment in a multi-establishment firm which produces a domestic article with which imported articles are like or directly competitive or a distinct part or section thereof whether or not the firm has more than one establishment wherein the articles are produced.

(5) The term "decreased absolutely" is used in reference to the sales or production of the firms or subdivisions thereof referred to in paragraph (a)(2) of this section irrespective of industry or market fluctuations and relative only to the previous performance of the firms or subdivisions thereof.

(6) The terms "like" and "directly competitive" are not synonymous: "Like" articles are those articles which are substantially identical in inherent or intrinsic characteristics. "Directly competitive" articles are those articles which are not substantially identical in inherent or intrinsic characteristics, but are substantially equivalent for commercial purposes, i.e., are adapted to the same function or use and are essentially interchangeable.

(7) The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause. Imports will be considered to have "contribut-

ed importantly" to total or partial separation or threat thereof, of a significant number or proportion of workers, and to a decline in sales or production, even if such imports were not the major factor in effecting such separation, threat thereof, and decrease. In determining whether imports contributed importantly among possible causes for separation or decreases, the influence of imports as a cause will be considered on the basis of the totality and interrelationship of all possible causes.

(c) In all cases, although EDA will assist the petitioner to demonstrate his meeting the criteria for certification of eligibility to apply for adjustment assistance under paragraph (a) of this section, the burden of proof is upon the petitioner to establish the eligibility of such community or communities for adjustment assistance by the submission of probative evidence.

[41 FR 52648, Dec. 1, 1976, as amended at 42 FR 59837, Nov. 22, 1977]

§ 315.99 The record.

The record shall consist of the petition for certification of eligibility to apply for adjustment assistance submitted by the applicant under § 315.92, any confidential business information submitted under § 315.93(c), the investigation report required by § 315.94, and such other relevant information that may be developed during the investigation, and, in the event that a public hearing is held, all evidence submitted pursuant to § 315.97(c), the transcript described in § 315.97(c)(5) and confidential business information submitted under § 315.97(c)(6).

§ 315.100 Decision of the Deputy Assistant Secretary for Economic Development Planning.

(a) The Deputy Assistant Secretary for Economic Development Planning shall make a determination based on the record as soon as possible after all of the material constituting the record has been submitted. In no event may the period exceed sixty days from the date on which the petition was accepted for filing.

(b) The Deputy Assistant Secretary for Economic Development Planning shall certify eligible for adjustment assistance the community or communities located in any Trade Impacted Area which he has determined meet the criteria of section 271(c) of the Trade Act. To the extent that any petitioning community or communities, or parts thereof, is not located in a Trade Impacted Area, the certification of eligibility for adjustment assistance of such community or communities or parts thereof will be denied. The Deputy Assistant Secretary for Economic Development Planning shall promptly notify the petitioner in writing of his decision. Notices of denials in whole or in part of petition shall specify the reasons upon which the denial is based. If any community is denied certification of eligibility for adjustment assistance, it shall not be entitled to resubmit its petition for certification of eligibility for adjustment assistance within the twelve month period succeeding the date of formal notice of the denial of certification of its eligibility.

§ 315.101 Appeals.

Any petitioner may appeal to the Assistant Secretary from a denial of certification of eligibility to apply for adjustment assistance, provided that such appeal is received in writing and in triplicate by personal delivery or by registered or certified mail, by the Director, Office of Planning and Program Support, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230 within sixty days from the date of the formal notice of denial of the petition issued under § 315.100. The appeal shall set forth the grounds upon which the appeal is based and a concise statement of the facts and circumstances or legal arguments asserted by the petitioner in support thereof. The decision of the Assistant Secretary shall be final within the Department and shall be provided in writing to the petitioner as promptly as practicable.

§ 315.102 Revocation of certification.

The Deputy Assistant Secretary for Economic Development Planning may terminate the certification of eligibility to apply for adjustment assistance of any community pursuant to section

271(f) of the Trade Act. Notice of such termination shall be published in the FEDERAL REGISTER and such termination shall take effect on the date specified by the Deputy Assistant Secretary for Economic Development Planning.

Subpart F—Adjustment Assistance for Communities

§ 315.120 Scope.

This subpart sets forth the requirements and procedures pursuant to which eligible communities may receive adjustment assistance under Chapter 4 of Title II of the Trade Act of 1974.

§ 315.121 Secretary's representatives—preprogram assistance.

Within 60 days after a community or communities are certified under 13 CFR Part 315, the Assistant Secretary shall send his representatives to the trade impacted area in which such community is located to—

(a) Inform officials of communities and other residents of such area about benefits available to them under this subpart; and

(b) Assist the officials and residents in establishing a Trade Impacted Area Council for Adjustment Assistance for such area.

§ 315.122 Trade Impacted Area Councils.

(a) The Assistant Secretary shall establish a Council for each trade impacted area in which one or more communities are certified under Subpart E.

(b) The Council shall—

(1) Develop a proposal for an adjustment assistance plan for the economic rejuvenation of certified communities n its trade impacted area; and

(2) Coordinate community action under the adjustment assistance plan as approved by the Assistant Secreary.

(c) The Council shall include repreentatives of certified communities nd representatives of labor, industry nd the general public (including appropriate minority representation) loated in the trade impacted area covred by the Council.

(d) If an appropriate entity for purposes of performing the functions specified in paragraph (b) of this section already exists in such area, then the Assistant Secretary may designate such entity as the Council for such area.

§ 315.123 Administrative expense grants.

(a) Upon application by a Council established or designated under § 315.122, the Assistant Secretary is authorized to make grants to such Council for maintaining an appropriate professional and clerical staff.

(b) No grant shall be made to a Council to maintain staff after the period which ends two years after the date on which such Council is established or designated.

§ 315.124 Application for assistance.

(a) A Council established or designated under § 315.122 may file an application with the Assistant Secretary for adjustment assistance under this subpart.

(b) Such application shall include the Council's proposal for an adjustment assistance plan for the communities in its impacted area. Such proposal shall contain the following:

(1) An identification of each adjustment need of the area for which assistance is sought. This should be an explanation of anticipated or existing economic problems and their impact on the eligible recipient.

(2) A description of each activity planned to meet each need. This explanation should include all activities that the eligible recipient has taken or plans to take regardless of whether funding is sought for them under this subpart and should indicate how each activity will contribute to the solution of economic problems.

(3) An explanation of the method of carrying out each planned activity. This should be an explanation for each activity of the amount of funds spent or needed, how each activity was or will be financed and brought into operation, and how each activity is or will be operated. The cost for each activity proposed to be funded under this subpart should be broken down into construction or start up costs, and

operating costs. A plan should clearly indicate how assistance under this subpart, if made by the Assistant Secretary, would be used.

(4) A statement regarding the goals of each planned activity.

(5) Evidence that the plan is not inconsistent with locally approved comprehensive plans for the jurisdiction affected, whenever such plans exists; and that A-95 requirements have been met.

(6) An identification and analysis of the potential environmental impacts of the planned activities, including identifiable projects.

(c) The Assistant Secretary shall make a determination as soon as possible after the date on which an application is filed.

§ 315.125 Types of assistance.

Adjustment assistance under this subpart consists of—

(a) All forms of assistance, other than loan guarantees, which are provided to a redevelopment area under the Public Works and Economic Development Act of 1965, as amended; and

(b) The loan guarantee program described in this subpart.

§ 315.126 Limitations.

No adjustment assistance may be extended to a community in a trade impacted area under this subpart unless—

(a) The Assistant Secretary approves the adjustment assistance plan submitted to him under § 315.124(b).

(b) The assistance is consistent with the adjustment assistance plan and related to the accomplishment of the purpose and objectives of such plan.

§ 315.127 Redevelopment areas and OEDP.

For purposes of the Public Works and Economic Development Act of 1965:

(a) A trade impacted area, for which an adjustment assistance plan has been approved under § 315.124, shall be treated as a redevelopment area, except that—

(1) No loan guarantees may be made to any person under such Act; and

(2) No loan or grant may be made to any recipient in such an area after September 30, 1980.

(b) Approval of an adjustment assistance plan submitted under § 315.124 shall be treated as approval of an overall economic development program under section 202(b)(10) of such Act.

§ 315.128 Use of loan guarantees.

The Assistant Secretary is authorized to guarantee loans for—

(a) The acquisition, construction, installation, modernization, development, conversion, or expansion of land, plant, buildings, equipment, facilities, or machinery; and

(b) Working capital.

§ 315.129 Loan guarantee requirements.

Loans guaranteed by the Assistant Secretary under this subpart must meet the following requirements:

(a) The loan must be made by a private lending institution to a private borrower in connection with projects in trade impacted areas.

(b) The loan guarantee shall be subject to the same terms and conditions to which loan guarantees are subject under section 202 of the Public Works and Economic Development Act of 1965, as amended (and regulations promulgated in 13 CFR Part 306), including records and audit requirements and penalties, except that—

(1) No new loan guarantee may be made under this section after September 30, 1982;

(2) A loan guarantee may be made for the entire amount of the outstanding unpaid balance of such loan; and

(3) No more than 20 percent of the amount of loan guarantees made under this section by the United States may be made in one State.

§ 315.130 Agreement to cover liability arising under loan guarantees.

(a) The State and/or community in which an applicant for a loan guarantee is located may enter into an agreement with the Assistant Secretary to cover any liability which arises on such guarantees.

(b) The agreement shall be signed by:

(1) The Governor of the State; or

(2) The authorized representative of the community; or

(3) The Governor of the State and the authorized representative of the community in which an applicant for a loan guarantee is located.

(c) The agreement shall provide that such State and/or such community will pay not to exceed one-half of the amount of any liability which arises on such loan guarantee.

§ 315.131 Priorities.

When considering whether to guarantee a loan to a corporation which is otherwise qualified under this subpart, the Assistant Secretary shall give preference to a corporation which agrees to fulfill the following requirements:

(a) Twenty-five percent of the principal amount of the loan shall be paid by the lender to a qualified trust established under an employee stock ownership plan established and maintained by:

(1) The recipient corporation;

(2) A parent or subsidiary of such corporation; or

(3) Several corporations including the recipient corporation.

(b) The employee stock ownership plan meets the requirements of § 315.132.

(c) The agreement among the recipient corporation, the lender, and the qualified trust relating to the loan meets the requirements of § 315.133.

§ 315.132 Employee stock ownership plan.

The governing instrument of an employee stock ownership plan must provide that:

(a) The amount of the loan paid to the qualified trust under § 315.131(a) will be used to purchase qualified employer securities;

(b) The qualified trust will repay to the lender the amount of such loan, together with the interest thereon, out of amounts contributed to the trust by the recipient corporation; and

(c) The qualified trust will, from time to time as it repays the loan and the interest thereon, allocate qualified employer securities among the individual accounts of participants and their beneficiaries in accordance with § 315.134.

§ 315.133 Loan (Trust) agreement.

The agreement among the recipient corporation, the lender, and the qualified trust shall:

(a) Be unconditionally enforceable by any party against the others, jointly and severally;

(b) Provide that the liability of the qualified trust to repay loan amounts paid to the qualified trust may not, at any time, exceed an amount equal to the amount of contributions required under § 315.132(b) which are actually received by such trust;

(c) Provide that amounts received by the recipient corporation from the sale of qualified employer securities to the qualified trust under § 315.132(a) will be used exclusively by the recipient corporation for the purposes for which it may use that portion of the loan paid directly to it by the lender;

(d) Provide that the recipient corporation may not reduce the amount of its equity capital during the one year period beginning on the date on which the qualified trust purchases qualified employer securities under § 315.132(a); and

(e) Provide that the recipient corporation will make contributions to the qualified trust of not less than such amounts as are necessary for such trust to timely repay the principal and interest on the amount of the loan received by the trust. Such contributions shall be made without regard to whether they are deductible by the corporation under section 404 of the Internal Revenue Code of 1964 and without regard to any other amounts the recipient corporation is obligated under law to contribute to or under the employee stock ownership plan.

§ 315.134 Allocation of securities.

(a) At the close of each plan year, an employee stock ownership plan shall allocate a portion of the qualified employer securities to the accounts of participating employees. The ratio that the portion of the securities allocated bears to the cost of all the qualified employer securities purchased under § 315.132(a) shall be substantially the same as the ratio that the amount of loan principal and interest repaid by the qualified trust during

best copy available

the year bears to the total amount of the loan principal and interest payable by such trust during the term of the loan.

(b) The ratio that the portion of qualified employer securities allocated to the individual account of a participant during one plan year bears to the total amount of all such securities allocated to all participants in the plan shall be substantially the same as the ratio that the amount of compensation paid to such participant bears to the total amount of compensation paid to all such participants during that year.

§ 315.135 Liquidation and administration of loans, guarantees and evidences of indebtedness.

In the event that the Assistant Secretary determines it is necessary or desirable to take actions to protect or further the interests of EDA in connection with guarantees made under this subpart, the Assistant Secretary may:

(a) Assign or sell at public or private sale or otherwise dispose of for cash or credit, in his discretion and upon such terms and conditions as he shall determine to be reasonable, any evidence of debt, contract, claim, personal or real property, or security assigned to or held by him in connection with financial assistance extended under the Act;

(b) Collect or compromise all obligations assigned to or held by him in connection with EDA financial assistance projects until such time as such obligations may be referred to the Attorney General for suit or collection; and

(c) Take any and all other actions determined by him to be necessary or desirable in purchasing, servicing, compromising, modifying, liquidating, or otherwise administratively dealing with or realizing on loans or guarantees made or evidences of indebtedness purchased under the Act.

§ 315.136 Community Adjustment Assistance Fund.

(a) A revolving fund to be known as the Community Adjustment Assistance Fund shall consist of—

(1) Such amounts as may be deposit ed in it pursuant to the authorizatio in section 274(b) of the Trade Act; an

(2) Any collections, repayments o loans, or other receipts received unde the program established in § 315.125 o this subpart.

(b) Amounts in the fund may b used only to carry out the provision of §§ 315.121-315.124 and § 315.126(a).

§ 315.137 Environmental requirements.

Applicants for assistance under th subpart must conform to the require ments of 13 CFR 309.18, "Environme tal requirements."

§ 315.138 Other requirements.

Any assistance which is provide under this subpart, excluding loa guarantees, is subject to all of the r quirements imposed by the Publ Works and Economic Developme Act of 1965, as amended, all regul tions and amendments published pu suant to that Act, and all terms a conditions that apply to the sa kinds of assistance provided to eligib recipients through the Economic D velopment Administration.

PART 316—LOCAL PUBLIC WOR CAPITAL DEVELOPMENT AND I VESTMENT PROGRAM

Sec.

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AUTHORITY: Title I, Pub. L. 94-369 U.S.C. 6701 et seq.); 90 Stat. 999; and De of Commerce Organization Order (Sept. 30, 1975), as amended (40 FR 56 as amended at 40 FR 58878 and at 41 FR 35548).

Source: 41 FR 46420, Oct. 20, 1976, unless otherwise noted.

§ 316.1 Purpose.

The purpose of this part is to set forth the requirements and procedures pursuant to which eligible applicants may receive grants under Title I of the Public Works Employment Act of 1976, which is entitled the "Local Public Works Capital Development and Investment Act of 1976."

§ 316.2 Definitions.

"Assistant Secretary" means the Assistant Secretary of Commerce for Economic Development or his delegate.

"General purpose unit of local government" means any city, county, town, parish, Indian tribe, school district or any other "unit of general local government" as included within the definition of that term by section 104 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4201 et seq.).

"Indian tribe" means the governing body of a tribe, nonprofit Indian corporation (restricted to Indians), Indian authority or other tribal organization or entity or Alaskan native village.

"Initiation of construction" means that notice to proceed or its equivalent has been issued or on-site labor has begun, except where on-site labor has commenced on the project but the project was abandoned due to lack of funds or where the project is to expand or modify a completed facility which has integrity in and of itself.

"Local Public Works Act" means the "Local Public Works Capital Development and Investment Act of 1976," which is Title I of the Public Works Employment Act of 1976.

"Local government" means any city, county, town, parish, or other political subdivision of a State (including local school districts), and any Indian tribe.

"Maintenance costs" means costs that are incurred for any necessary repairs or upkeep of property which neither adds to the permanent value of the property or appreciably prolongs its intended life, but rather keeps it in an efficient operating condition.

"Political subdivision of a State" means the agencies, instrumentalities and authorities established or authorized by State law including, but not limited to, special districts and regional authorities formed by local governments.

"Public works" means public facilities including, but not limited to, municipal offices, courthouses, libraries, schools, police and fire stations, detention facilities, water and sewer lines, streets and roads (including curbs), sidewalks, lighting, recreational facilities, convention centers, civic centers, museums, and facilities.

"Renovation, repair or other improvements" means only those activities which either substantially or appreciably increase the value or prolong the life of a public facility and excludes those activities which keep the public facility in ordinary efficient operating conditions during its probable useful life.

"State" includes the several States, the health, education and social service District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa.

§ 316.3 Applicants.

A State or a local government, as defined in § 316.2 is eligible for assistance under the Local Public Works Act.

§ 316.4 Direct grants.

(a) The Assistant Secretary may make direct grants to any State or local government for construction (including demolition and other site preparation activities), renovation, repair, or other improvement of local public works projects, including those for which Federal financial assistance is authorized under provisions of law other than the Local Public Works Act. Such grants may include funds for the completion of plans, specifications and estimates where additional architectural and engineering work or related planning is required to permit construction of the project under this section.

(b) Applications under this section will be approved only if the applicant submits with its application, if applicable, and required by EDA, a written certification from the other Federal agency/agencies primarily concerned with projects of the type involved in the application that the project meets all applicable Federal statutory and regulatory requirements to the extent necessary to assure the utilization of the project for the services intended.

(c) The Federal share of any project for which a grant is made under this section shall be 100 per centum of the cost of the project exclusive of any funds budgeted and available or otherwise specifically committed for the project by the applicant.

§ 316.5 Supplemental grants.

(a) The Assistant Secretary may make supplemental grants for the purpose of increasing the Federal contribution to 100 percent of the project cost (exclusive of any funds budgeted and available or otherwise specifically committed for the project by the applicant) for any federally assisted public works project authorized by any Federal law other than the Local Public Works Act if the applicant submits with its application:

(1) A written certification from the other Federal agency/agencies that:

(i) Federal financial assistance for the project has been approved and the funds are immediately available for the project;

(ii) The project meets all applicable Federal statutory and relevant related requirements; and

(2) Its written certification that actual construction of the project has not yet been initiated because of lack of funding for the non-Federal share.

(b) The Assistant Secretary also may make grants in an amount necessary to provide all or part of the required State or local share (but not both shares) of the cost of any public works project for which financial assistance is authorized by State or local law requiring such contribution if the applicant submits with its application a written certification from the appropriate authority that:

(1) The share of financial assistance not applied for has been properly approved and is immediately available for the project;

(2) The project meets all applicabl
statutory and other relevant require
ments of law; and

(3) Construction of the project ha
not yet been initiated.

(c) Grants under this section may in
clude funds for the completion o
plans, specifications, and estimate
where additional architectural and en
gineering work or related planning i
required to permit construction of th
project under this section.

§ 316.6 Limitations on grants.

(a) *Canals and watercourses.* N
grant shall be made under this par
for any project having as its princip
purpose and permanent effect:

(1) The channelization, damming, d
version, or dredging of any natural w
tercourse, or

(2) The construction or enlargemen
of any canal except a canal or racewa
designated for maintenance as an hi
toric site.

(b) *Real property.* No part of an
grant made under this part shall b
used for the acquisition of any intere
in real property.

(c) *Maintenance.* No part of an
grant made under this part shall b
used for the payment of maintenanc
costs in connection with a project co
structed (in whole or in part) wit
Federal financial assistance under th
Local Public Works Act.

§ 316.7 Priority of projects.

(a) *Allocation of funds.* (1) I
making grants under this part, whe
the average national unemploymen
rate for the three most recent conse
utive months for which data is avai
able from the United States Depar
ment of Labor, has been at least 6
percent:

(i) Seventy percent of all amoun
appropriated to carry out the Loc
Public Works Act shall be allocate
for project applications submitted b
State or local governments whose a
erage unemployment rate for th
three most recent consecutive month
for which information is available e
ceeds the average national unemplo
ment rate for the same period of tim
The Assistant Secretary shall expedi

and give priority to applications in this category.

(ii) The remaining thirty percent of all amounts appropriated to carry out the Local Public Works Act shall be available for distribution according to priority as listed below:

(A) Project applications submitted by State or local governments whose average unemployment rate for the three most recent consecutive months for which information is available is more than 6½ percent but not more than the average national unemployment rate for the same period of time, and

(B) Project applications submitted by State or local governments whose average unemployment rate for the three most recent consecutive months for which information is available is 6½ percent or less. These project applications will be considered only when funding of such projects is necessary to fulfill the minimum funding level required for each State or if funds are available in the 30 percent category.

(b) *State limitations:* Not less than one-half of one percent or more than twelve and one-half percent of all amounts appropriated to carry out the Local Public Works Act shall be granted for local public works projects within any one State, except that not less than one-half of one percent of the total of all funds appropriated for this part shall be granted for public works projects in Guam, the Virgin Islands, and American Samoa, in the aggregate.

§ 316.8 Allocation of program resource levels to regional offices.

(a) *Regional allocations.* To assist in the orderly utilization of program resources, the Assistant Secretary will assign to each regional office a target level of anticipated project assistance for the total of all areas served by that regional office. Such regional allocations of program resources shall be based on appropriation apportionments available to EDA and shall be calculated on a formula basis reflecting the relative numbers of unemployed persons in the States served by the regional office and the level of unemployment rates in those States.

(b) *State planning ceilings.* Regional offices shall observe with respect to each State served by it a ceiling on project approval recommendations. The allocation of funds to regions and States will be made after the funds have been apportioned to EDA and will be based on unemployment data available at that time. EDA will announce the date on which the funds are apportioned and the allocation is made. The formula by which the planning ceiling for each State will be established is as follows:

> Subject to program administrative costs and statutory minimum and maximum amounts allocated to individual States by the legislation, 65 percent of the funds will be set aside as planning ceilings for individual States based on the share of unemployed workers residing in a State of the total national unemployed; 35 percent of the funds will be set aside as planning ceilings to individual States based on the relative severity of unemployment for each State above the composite unemployment rate for all States.

(c) It is to be understood that the planning ceiling assigned to each State is not to establish an entitlement to any minimum level of project assistance within that State (unless such is the statutory maximum or minimum) but is adopted only for the purpose of furthering the objective of assuring that adequate consideration is given to the relative needs of various sections of the country. Where the planning ceiling calculated on the formula basis is less than the statutory minimum assured for each State the statutory minimum shall be the planning ceiling, and where the planning ceiling calculated on the formula basis is greater than the statutory maximum for any State the statutory maximum shall be the planning ceiling.

(d) 120 days after the date on which funds are first apportioned for program assistance under the Act and at any time thereafter the Assistant Secretary may reconsider the regional allocations and State ceilings previously established and make such adjustments as are determined to be reasonable in achieving the purposes of the Act.

§ 316.9 Determination of unemployment rates.

(a) The average unemployment rate for the three most recent consecutive months for which data is available for a State or local government applicant under this part may be determined from information obtained in the following order:

(1) *The United States Department of Labor.* (i) EDA's Qualification Division has provided to EDA's Regional Offices and Economic Development Representatives a list, prepared by the United States Department of Labor, which shows the average unemployment rate for the three most recent consecutive months for:

(A) The entire nation;

(B) Each State; and

(C) Where available, "identifiable" local governments.

(ii) On or before September 15, 1976, EDA's Qualification Division will provide to EDA's Regional Offices and Economic Development Representatives a list, prepared by the United States Department of Labor, which will show the average unemployment rate for the three most recent consecutive months for approximately 1,000 counties throughout the nation.

(iii) The above lists will be updated and expanded if and when more information is obtained from the United States Department of Labor.

(2) If not available from the United States Department of Labor the average unemployment rate for the three most recent consecutive months for which information is available shall be obtained from the State employment security agency.

(3) Indian tribes shall submit information from the Bureau of Indian Affairs of the United States Department of Interior or other appropriate sources acceptable to the Assistant Secretary.

(b) If requested by an applicant, the unemployment rate of a local government shall be based upon the unemployment rate of any community or neighborhood (defined without regard to political or other subdivisions or boundaries) within the jurisdiction of such local government, except that any grant made to a local government based upon the unemployment rate of
a community or neighborhood withi
its jurisdiction must be for a project
direct benefit to, or provide emplo
ment for, unemployed persons who a
residents of that community or neig
borhood. The applicant shall apply
the State employment security agen
for the average unemployment r
for the three most recent consecut
months for which data is availab
The data obtained from the State e
ployment security agency will be
cepted by the Assistant Secretary.

(c) If requested by an applicant,
determining the unemployment r
of a local government, unemploym
in those adjoining areas from wh
the labor force for a project may
drawn shall be taken into consi
ation.

(d) The Assistant Secretary has
tained from all State employment
curity agencies their cooperation
provide all applicants, other t
Indian tribes, with unemploym
data.

(e) EDA will not accept an u
ployment rate determination th
based on data obtained for a
period which is longer than tw
months prior to the date of the a
cation as stated therein.

(f) The unemployment rate e
lished by one of the procedures a
will determine whether the area
fies for the 70 percent or 30 pe
category as described in § 316.7.

(g) No data regarding unem
ment rates for time periods afte
date of the application as stated t
in, may be changed.

§ 316.10 General considerations a quirements for financial assistan

(a) *Project selection procedu*
Considerations. In line with th
poses and objectives of the Act,
goal of choosing projects havi
greatest potential for furthering
purposes and objectives, the r
importance of various factors in
mining this potential, and the
ability and consistency of data
fied in the Act, the following
selection procedures have been
ed.

(2) *Project selection formul*
ranking procedure developed

lecting projects within each State's planning allocation uses those project and area factors that will contribute most to achieving substate equity in the distribution of planning funds and insures that the relatively more economically efficient projects are selected. All factors will be standardized for comparability purposes and assigned policy weights to reflect their importance in the ranking procedure.

(i) *Basic rank.* The basic rank of a project will be determined by the following factors:

(A) The number of unemployed workers in the project area averaged over the three most recent months for which data is available. An area characterized as having a high unemployment rate overall is generally characterized as having a high unemployment rate in the construction industry. Similarly, an area characterized as having a large number of unemployed overall is generally characterized as having a relatively large number of unemployed construction workers as a share of the overall unemployed. Therefore, this factor gives consideration to construction unemployment. This factor will constitute 30 percent of a project's basic rank.

(B) Severity and duration of unemployment, as measured by the unemployment rate prevailing in the project area averaged over the last three months for which data is available. This factor will constitute 25 percent of a project's basic rank.

(C) The relationship of labor cost to total project cost, defined as the ratio of total wages to total project cost. In formulating project proposals, applicants should bear in mind the intent of the Act to reduce unemployment generally, and to give due consideration to the amount of unemployment and underemployment in the construction and construction-related industries. As previously indicated, projects eligible for funding would include, but are not limited to, such local public works projects as municipal offices, courthouses, libraries, schools, police and fire stations, detention facilities, water and sewer lines, streets and roads, civic centers, museums, health, education and social service facilities, convention centers, and the upgrading of existing facilities through renovation, repair, and other related improvements. To implement the legislative objective of assisting the construction and construction-related industries:

(*1*) Projects having labor costs greater than 35 percent of total project costs, but not more than 80 percent, will receive the maximum score for this factor; and (*2*) projects having labor costs ranging from 10 to 35 percent of total project costs will be ranked according to their respective percentages, with projects having 35 percent receiving the maximum score for this factor. Finally, it should be emphasized that supplemental assistance provided for under the Act will be considered as part of the total project costs; the latter is defined as funds from all sources, whether Federal, State, or local. The relationship of labor cost to total project cost will constitute 30 percent of a project's basic rank.

(D) The level of income prevailing in the project area (which for purposes of this factor is defined as the applicant's jurisdiction). This factor will constitute 15 percent of a project's basic rank.

(ii) *Additional considerations.* A project's basic rank will be increased if the project meets one or more of the following criteria:

(A) Exhibits potential for providing long-term benefits. The basic rank of a project will be increased up to a maximum of 10 percent if it meets this criterion. The amount of increase will be determined by the nature and extent of the long-term benefit(s) to be provided by the project.

(B) Is sponsored by a general purpose unit of local government, as defined in § 316.2 of this part. Projects meeting this criterion will have their basic ranks increased by five percent.

(C) Is sponsored by a special purpose unit of local government or a political subdivision of a State. Projects meeting this criterion will have their basic ranks increased by three percent.

(D) Relates to existing approved plans and programs of a local community development or regional development nature or promotes or advances longer range plans and programs. The basic rank of a project meeting this criterion will be increased by five percent.

(iii) *Final rank.* The final rank of a project is to be determined by summing the basic rank and increases attributable to the additional considerations defined above.

(3) *Application of project selection formula*—(i) *Geographic considerations.* Projects will be ranked and assessed relative to other projects submitted from the *same* State until such time as the Assistant Secretary determines, pursuant to paragraph (a)(2) of this section, that comparison of projects submitted from different States is required to either further the purposes and objectives of the Act or to comply with statutory requirements.

(ii) *Priority considerations.* Within each State, projects submitted from areas with an unemployment rate exceeding the national average for the most recent consecutive three months will be ranked and compared only with projects submitted from other areas in this priority category. Similarly, projects submitted by areas with an unemployment rate below the national average for the most recent consecutive three months will be ranked and compared only with projects submitted from other areas in the same priority category. Applicants who anticipate the project labor requirements will draw upon the unemployed and underemployed labor resources of other jurisdictions outside the immediate project area (such as a multi-county area) will be given priority consideration on the basis of the unemployment rate prevailing in the extended geographical (labor market) area. Similarly, the basic rank computations discussed above will be computed in aggregate on data provided for the extended geographical area.

(iii) *Project selection.* Within each State and priority category, projects will be selected until the State planning allocation has been exhausted or until such time as the Assistant Secretary determines that the remaining funds made available under the Act must be reallocated among the States. In selecting projects for funding, the Assistant Secretary shall give primary consideration to the final rank of a project. However, the Assistant Secretary may approve projects which rank below other projects as may be necessary to avoid an undue geographic concentration of program assistance in any particular area or areas of a State or as may be necessary to meet the required distribution of program resources between the statutorily mandated priority classes or when the sum of the total project labor requirements in a project area exceeds the available labor.

(b) An application shall be rejected unless:

(1) It is properly prepared on appropriate forms prescribed by the Assistant Secretary.

(2) It contains one of the following:

(i) Information showing that the area conforms to an area for which United States Department of Labor unemployment statistics are available; or

(ii) Unemployment information from the appropriate State unemployment security agency.

(3) It contains a certification by the applicant that construction on the project has not yet been initiated;

(4) It contains assurances, satisfactory to the Assistant Secretary, that on-site labor can begin within ninety days of project approval;

(5) Where applicable, it relates the proposed project to existing approved plans and programs of a local community development or regional development nature so as to avoid harmful or costly inconsistencies or contradictions;

(6) It contains evidence, where feasible, that the proposed project will promote or advance longer range plans and programs;

(7) It contains adequate assurances that all laborers and mechanics employed by contractors or subcontractors on the proposed project will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5).

(8) It contains adequate assurance by the applicant and by any "other parties" as defined in 15 CFR Subtitle A, Part 8, that no person shall, on the

grounds of race, color, sex, or national origin, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under the proposed project; and an assurance that it is not involved in any civil rights litigation or if it is involved in a lawsuit or Federal administrative action alleging discrimination it shall provide a brief narrative description of the action alleging discrimination and its outcome.

(9) It contains certification, by the properly authorized official of the Federal agency or State or local government, that no funds budgeted and available or otherwise specifically committed for the project applied for in its application shall be reduced, diminished, or replaced by funds requested under this part.

(10) It is, in the opinion of the Assistant Secretary, accurate and complete.

(c) Applicants should be advised that false representations and/or certifications in connection with applications for assistance under this part may be the basis for criminal liability under Title 18 of the United States Code.

(d) No cost overruns for public works projects previously funded under this part will be approved.

(e) Project costs for administration, plans, specifications, estimates or other A/E costs, which have been incurred prior to the date of application, will not be funded.

(f) Applications will not normally be approved where any of the following conditions exist:

(1) The applicant has not obtained rights to the project site, including easements and rights-of-way, in one of the following ways:

(i) The eligible applicant owns the project facility and/or site clear of any encumbrances;

(ii) The eligible applicant holds a noncancellable long-term lease on the project facility and/or site which is defined as 20 years or the useful life of the facility, whichever is longer; or

(iii) The eligible applicant holds a clearly enforceable option through time of grant approval to purchase the project facility and/or site and demonstrates that it has sufficient funds available to complete the purchase.

(2) The project request is for a supplemental to another Federal, State or local grant which has not been approved by the applicable grant agency.

(3) The project's labor requirements equal or exceed one-third of the project area's unemployed labor force.

(g) The maximum amount of financial assistance made available under this part should not exceed $5 million for each project; however, the Assistant Secretary may, in his discretion, waive this policy for good cause.

(h) Projects with extremely high ratios of labor costs to total project costs (greater than 80 percent) and projects with extremely low ratios of labor costs to total project costs (less than 10 percent) will be rejected and denied.

§ 316.11 Compliance with other Federal requirements.

Each applicant shall, as a condition to its receipt of a grant under this part, comply with the following relevant Federal requirements:

(a) All labor standards including those relating to the payment of wages, working conditions, anti-kickback prohibitions and equal employment as provided 13 CFR 309.6;

(b) Those concerning relocation and related payments to all persons displaced as a result of the development of a public works project with funds received under this part, as provided for in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 *et seq.*, and 13 CFR Part 310;

(c) If the project involves a detention facility, those sections of Part E of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, found at 42 U.S.C. 3750 b (1) and (4)-(9);

(d) The provisions of OMB Circular A-95, except during the first ninety days after EDA begins receiving applications when the following procedures shall apply:

(1) Applicants must submit their full applications or notifications of intent to apply to the appropriate clearinghouse as early as possible.

(2) Upon submission of an application to EDA, the applicant must certi-

fy that he has submitted the full application to the appropriate clearinghouse.

(3) EDA may begin processing the application upon its receipt but will make no final approval of an application until 30 days after its receipt unless clearinghouse response is received before 30 days have elapsed.

(4) During the first ninety days, applications received by EDA need not have State application identifier numbers.

(5) Clearinghouse comments will be submitted directly to EDA; EDA will consider such comments until it has finished processing the application.

(e) All environmental requirements, to the maximum extent possible, as determined by the Assistant Secretary, including, but not limited to:

(1) The National Environment Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*); and EDA's requirements found in § 316.13 of this part;

(2) The Clean Air Act, as amended (42 U.S.C. 1857-1858a);

(3) The Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1376);

(4) The National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) and EDA's requirements found in § 316.13 of this part;

(5) The Wild and Scenic Rivers Act (16 U.S.C. 1271-1287);

(6) The Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*);

(7) The Historical and Archeological Data Preservation Act, as amended (16 U.S.C. 469 et seq.).

(f) 13 CFR 309.9, entitled "Records and Audit;"

(g) 13 CFR 309.27, entitled "Land use near Federal airfields;"

(h) 13 CFR 309.14, entitled "Design, construction, and alteration of buildings to accommodate the physically handicapped;"

(i) 13 CFR 309.26, entitled "Project modification;"

(j) 13 CFR Part 314, entitled "Property management standards," except 13 CFR 314.6(a), 13 CFR 314.6(b), and 13 CFR 314.50.

(k) The National Flood Insurance Program and EDA's requirements regarding flood hazards found at 13 CFR 309.15; and

(l) Other laws affecting this program.

§ 316.12 Acceptance of applications.

(a) Applications for assistance under this part shall only be submitted to the appropriate EDA Regional Office, as provided in 13 CFR 301.31.

(b) Applications shall be recorded and deemed received upon their arrival at the appropriate EDA Regional Office.

(c) EDA shall endeavor, within five working days from the date the application is actually received by the appropriate Regional Office, to determine whether the application has been completely and properly prepared, and contains accurate unemployment rates. An application may be rejected (denied) unless it contains full and accurate information including the requirements of § 316.10 of this part. By the end of the fifth working day after the date the application was received, the Regional Director should notify the applicant if the application has been rejected, and state what is needed to properly complete the application. However, EDA reserves the right during the 60 day period after receipt of an application to reject an application for substantially being incomplete, improperly prepared, or otherwise failing to meet the requirements of this part.

§ 316.13 Lease of project facilities.

(a) The project facility may be leased by the grantee to a non-profit operator providing the applicant maintains a continuing significant economic interest in the project and is not acting simply in a passive role for a prospective lessee, and such facility is used for the purpose of the grant.

(b) The project facility may be leased by the grantee to a profit making operator provided all of the following conditions are met:

(1) The lease is incidental to the project and not its principal purpose;

(2) The lease does not change the public nature or character of the purpose of the project as a whole; and

(3) The applicant maintains a continuing significant economic interest in the project and is not acting simply

in a passive role as applicant for a prospective lessee.

§ 316.14 Environmental considerations.

(a) *The National Environmental Policy Act.* (1) Since the Local Public Works Act requires applications to be processed within 60 days of their acceptance, EDA will not be able to prepare environmental impact statements for those projects which may significantly affect the quality of the human environment. However, to the fullest extent possible within this time period, EDA will analyze a project's potential environmental impacts and give appropriate consideration to environmental impacts in making its final decision.

(2) In order that EDA may conduct its environmental analysis of proposed projects, applicants shall include the following materials with their application, except with respect to paragraphs (a)(2) (iii) and (iv) if such materials are not available in which case the applicant must so certify:

(i) A description of those elements of the proposed project which will have an impact on the environment, the nature of the environment which will be affected; and data on the expected environmental impact;

(ii) Alternatives to the proposed project;

(iii) Any environmental analysis previously conducted by local, State, Federal agencies; and

(iv) Evidence of public reaction to the project, such as transcripts of local public hearings held on the proposal.

(3) EDA will independently review and analyze environmental information submitted by applicants.

(i) Where appropriate, EDA, within the 60 day limit, may seek the views of other government agencies which have urisdiction by law or special expertise with respect to any environmental mpact involved.

(ii) If a project appears to be highly ontroversial for environmental reaons and there is a need to further unerstand the basis of the controversy, EDA may, within the 60 day limit, reuest the views of concerned residents hrough a newspaper notification or a public information meeting held near he project site.

(4) EDA shall deny an application if, after consideration of the benefits of a project against any environmental costs, it concludes that the environmental costs exceed the benefits. EDA may deny any application solely on the basis that its environmental impact analysis discloses that unacceptable adverse impacts will or are likely to result. EDA, where necessary, may condition approval of a project upon the adoption of specified measures designed to mitigate any adverse environmental impacts.

(b) *The National Historic Preservation Act.* (1) Applicants shall include with their applications either a statement of their State Historic Preservation Officer's views of the proposed project or shall certify that their State Historic Preservation Officer was provided with a detailed project description and request for comments prior to application's submission to EDA.

(2) If necessary, EDA will attempt to complete the coordination of proposed projects with the Advisory Council on Historic Preservation. EDA will use the results of this coordination process, even though completion of this process may not be possible, as a factor in making a final decision on the project.

[41 FR 46420, Oct. 20, 1976, as amended at 41 FR 48116, Nov. 2, 1976]

§ 316.15 Final determination.

(a) All applications for assistance under this part shall be processed by the appropriate EDA Regional Office.

(b) The Regional Director shall notify the applicant, in writing, when its application has been rejected and state the reasons therefor.

(c) The Regional Director shall forward to the Assistant Secretary in Washington, D.C., all applications which he deems are properly completed and eligible for assistance under this part.

(d) The Assistant Secretary shall review all applications received from the Regional Directors and make the final determination.

(e) If no determination has been made by the end of the sixtieth day after the application was received as determined in § 316.12, the application will be deemed to be approved.

§ 316.16 Suspension and termination.

(a) *Suspension or termination for cause.* EDA may initiate a suspension or termination of a project approved under this part for failure by the grantee to adhere to the requirements of the grant. EDA shall promptly notify the grantee in writing of the suspension or termination, specifying the reasons for the action and its effective date. Payments made to the grantee or recoveries by EDA under grants suspended or terminated for cause shall be in accord with the legal rights and liabilities of the parties.

(b) *Suspension or termination for convenience.* EDA or the grantee may initiate a suspension or termination of a project approved under this part when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the conditions of the action, including the effective date, and in the case of partial suspension or termination, the portion to be suspended or terminated. The grantee shall not incur new obligations for the suspended or terminated portion, after the effective date, and shall cancel as many outstanding obligations as possible. EDA shall allow full credit to the grantee for the Federal share of the non-cancellable obligations, properly incurred by the grantee prior to suspension or termination.

[41 FR 49804, Nov. 11, 1976]

PART 317—ROUND II OF THE LOCAL PUBLIC WORKS CAPITAL DEVELOPMENT AND INVESTMENT PROGRAM

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SOURCE: 42 FR 27432, May 27, 1977, unless otherwise noted.

Subpart A—Introduction

§ 317.1 Purpose.

The purpose of this part is to set forth the requirements and procedures pursuant to which eligible applicants may receive grants under the "Local Public Works Capital Development and Investment Act of 1976," as amended by the "Public Works Employment Act of 1977," Pub. L. 95-28.

§ 317.2 Definitions.

"*Assistant Secretary*" means the Assistant Secretary of Commerce for Economic Development or his delegate.

"*Endorsement*" means the process by which an applicant can select a project, which was originally submitted by another applicant, for consideration for funding from its planning target.

"*General purpose unit of local government*" means any city, county, town, parish, or any other "unit of general local government" as included within the definition of that term by section 104 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4201 et seq.).

"*Indian tribe*" means the governing body of a tribe, nonprofit Indian corporation (restricted to Indians), Indian authority, or other tribal organization, or entity, or Alaskan native village.

"*Initiation of construction*" means that notice to proceed or its equivalent has been issued or on-site labor has begun, except where on-site labor has commenced on the project but the project was abandoned due to lack of funds or where the project is to expand or modify a completed facility which has integrity in and of itself.

"*Local Public Works Act*" means the "Local Public Works Capital Development and Investment Act of 1976," as amended by the "Public Works Employment Act of 1977," Pub. L. 95-28.

"*Local government*" means any city, county, town, parish, or other political subdivision of a State (including local school districts), and any Indian tribe.

"*Maintenance costs*" means costs that are incurred for any necessary repairs or upkeep of property which neither add to the permanent value of the property nor appreciably prolong its intended life, but rather keep it in an efficient operating condition.

"*Minority business enterprise*" means a business at least 50 percent of which is owned by minority group members or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by minority group members.

"*Minority group member*" means a citizen of the United States who is Negro, Spanish-speaking, Oriental, Indian, Eskimo, or Aleut.

"*Non-primary city*" means any city, township, or village with a population of less than 50,000 persons.

"*Pocket of poverty*" means a project area with a population of 4,000 or more persons and an unemployment rate of at least 8.5 percent which becomes qualified for assistance using the procedures contained in section 108(e) of the Local Public Works Act. A pocket of poverty must be located within a primary city which did not receive a planning target.

"*Political subdivision of a State*" means the agencies, instrumentalities and authorities established or authorized by State law including, but not limited to, special districts and regional authorities formed by local governments.

"*Project area*" means a primary city; the balance of a county in which a primary city is located; a county without a primary city; a pocket of poverty; or an Indian reservation or tribal land (trust and/or restricted land), as appropriate under the provisions of § 317.33.

"*Primary city*" means any city or township (which performs the same services as a city) with a population of 50,000 or more persons, as determined by the Bureau of the Census 1973 estimates.

"*Renovation, repair, or other improvements*" means only those activities which either substantially or appreciably increase the value or prolong the life of a public facility and excludes those activities which keep the public facility in ordinary efficient operating condition during its probable useful life.

"*Round I*" of funding under the local Public Works program refers to the funding of projects with money appropriated by Pub. L. 94-447.

"*Round II*" of funding under the Local Public Works program refers to the funding of projects with money appropriated by Pub. L. 95-29.

"*State*" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

[42 FR 27432, May 27, 1977, as amended at 42 FR 35822, July 11, 1977]

Subpart B—Eligibility Criteria

§ 317.10 Eligible applicants.

A State or a local government, as defined in § 317.2, is eligible for assistance under this part if it is located in an area described in § 317.11.

§ 317.11 Eligible areas.

(a) Subject to the provisions of paragraph (b) of this section, assistance under this part may only be extended to eligible applicants located in project areas, as defined in § 317.2, for which planning targets have been established. Planning targets have been established in the following manner, subject to the provisions of § 317.42 and Subpart E of this part.

(1) Where the State average unemployment rate is 6.5 percent or higher, planning targets have been established for project areas with unemployment rates of at least 6.5 percent.

(2) Where the State average unen ployment rate is less than 6.5 percen planning targets have been establishe for project areas with unemploymen rates of at least the State average u employment rate.

(3) Notwithstanding the provision of paragraphs (a) (1) and (2) of th section, planning targets have been e tablished for pocket of poverty proje areas only where such areas have u employment rates of at least 8.5 pe cent.

(b) In States which are receiving th statutory minimum allocation of Loc Public Works funds and for which th Assistant Secretary has waived th priority ranking of applicants require by section 108(c) of the Local Publ Works Act, assistance under this pa may be extended to eligible applican in project areas as necessary to expen the statutory minimum allocation.

§ 317.12 Eligible applications for round funding.

The following applications shall b eligible for consideration for fundin under round II of the Local Publ Works program:

(a) Applications for Local Publ Works projects submitted by eligib applicants located in eligible areas, defined in § 317.11, which were r ceived by EDA before December 2 1976, including applications originall filed before that date which were r turned for deficiencies; and

(b) New applications from eligib applicants located in eligible area subject to the requirements § 317.31.

§ 317.13 Types of grants.

(a) *Direct grants.* (1) The Assistan Secretary may make direct grants t any State or local government for con struction (including demolition an other site preparation activities), ren ovation, repair, or other improvemen of Local Public Works projects, includ ing those for which Federal financia assistance is authorized under provi sions of law other than the Loca Public Works Act. Such grants may in clude funds for the completion o plans, specifications, and estimate where additional architectural and en gineering work or related planning is required to permit construction of the project under this section.

(2) Applications under this section will be approved only if the applicant submits with its application, if applicable and required by EDA, a written certification from the other Federal agency/agencies primarily concerned with projects of the type involved in the application that the project meets all applicable Federal statutory and regulatory requirements to the extent necessary to assure the utilization of the project for the services intended.

(3) The Federal share of any project for which a grant is made under this subsection shall be 100 percent of the cost of the project exclusive of any funds budgeted and available or otherwise specifically committed for the project by the applicant, except to the extent that the Federal share of the project is increased by a change by EDA in the applicant's or endorser's planning target.

(b) *Supplemental grants.* (1) The Assistant Secretary may make supplemental grants for the purpose of increasing the Federal contribution to 100 percent of the project cost for any Federally assisted public works project authorized by any Federal law other than the Local Public Works Act.

(i) Ordinarily, the Assistant Secretary will award supplemental grants increasing the Federal contribution to 100 percent of the project cost exclusive of any funds budgeted and available or otherwise specifically committed for the project by the applicant.

(A) For the funding of revived applications during round II, the Assistant Secretary may waive the requirement of paragraph (b)(1)(i) of this section where:

(*1*) The applicant had provided the assurance that no funds were budgeted and available or otherwise specifically copmmitted for the project in round I; and

(*2*) The applicant demonstrates that local funds apparently available were diverted from some other use solely to meet the additional requirements of other Federal programs caused by the delay in funding between rounds I and II.

(ii) The applicant shall submit with its application a written certification that actual construction of the project has not yet been initiated because of lack of funding for the non-Federal share.

(A) The Assistant Secretary may waive this requirement where he finds that construction was initiated after filing of the application under round I due to the requirements of the other Federal program.

(iii) The applicant shall submit written certification obtained from the other Federal agencies involved in the project that:

(A) Federal financial assistance for the project has been approved and the funds are immediately available for the project; and

(B) The project meets all applicable Federal statutory and relevant related requirements.

(2) The Assistant Secretary also may make grants in an amount necessary to provide all or part of the required State or local share (but not both shares) of the cost of any public works project for which financial assistance is authorized by State or local law requiring such contribution if the applicant submits with its application a written certification from the appropriate authority that:

(i) The share of financial assistance not applied for has been properly approved and is immediately available for the project;

(ii) The project meets all applicable statutory and other relevant requirements of the law; and

(iii) Construction of the project has not yet been initiated.

(3) Grants under this subsection may include funds for the completion of plans, specifications, and estimates where additional architectural and engineering work or related planning is required to permit construction of the project under this section.

[42 FR 27432, May 27, 1977, as amended at 42 FR 35823, July 11, 1977; 42 FR 38896, Aug. 1, 1977]

§ 317.14 Eligible projects.

Eligible projects include projects for the construction of public works facilities, including but not limited to municipal offices, courthouses, libraries, schools, police and fire stations, detention facilities, water and sewer lines, streets and roads (including curbs), sidewalks, lighting, recreational facilities, convention centers, civic centers, museums, other public facilities, and the transportation of and providing of water to drought-stricken areas as designated by the Federal Disaster Assistance Administration or other Federal agency or department authorized to designate drought-stricken areas.

§ 317.15 Ineligible projects.

The following projects shall be ineligible for funding under this part:

(a) *Canals and watercourses.* Unless the requirements of § 317.72 are met, no grant shall be made under this part for any project having as its principal purpose and permanent effect:

(1) The channelization, damming, diversion, or dredging of any natural watercourse, or

(2) The construction or enlargement of any canal except a canal or raceway designated for maintenance as a historic site.

(b) *Projects on which construction has been initiated.* (1) For projects seeking a supplemental grant under § 317.13(b)(1), the project will be eligible where construction has been initiated if the Assistant Secretary determines that construction was initiated after filing the application under round I due to the requirements of the other Federal program.

(c) Projects on which on-site labor cannot begin within 90 days after receipt of notification of project approval.

(d) Projects with extremely high ratios of labor costs to total project costs (greater than 80 percent) and projects with extremely low ratios of labor costs to total project costs (less than 10 percent).

(e) Projects whose costs exceed the planning targets established by Subpart E. Such projects are ineligible unless the applicant funds those costs which exceed the amount of the planning target.

[42 FR 27432, May 27, 1977, as amended at 42 FR 35823, July 11, 1977]

§ 317.16 Projects ineligible unless accompanied by unusual circumstances.

Projects will not normally be approved where any of the following conditions exist.

(a) The applicant has not obtained rights to the project site, including easements and rights-of-way, in one of the following ways:

(1) The eligible applicant owns the project facility and/or site clear of any encumbrances;

(2) The eligible applicant holds a noncancellable long-term lease on the project facility and/or site which is defined as 20 years or the useful life of the facility, whichever is longer; or

(3) The eligible applicant holds a clearly enforceable option through time of grant approval to purchase the project facility and/or site and demonstrates that it has sufficient funds available to complete the purchase.

(b) The project request is for a grant supplemental to another Federal, State or local grant which has not been approved by the applicable grant agency.

(c) The project's construction will involve the use of raw materials not mined or produced in the United States, or U.S. manufactured articles not substantially made from raw materials mined or produced in the United States, or manufactures not manufactured in the United States.

(1) The restriction contained in paragraph (c) of this section will not apply to any project for which the Assistant Secretary makes one of the following determinations:

(i) The restriction is not in the public interest; or

(ii) The restriction would cause unreasonable project costs; or

(iii) Materials or articles, either raw or manufactured, needed in the construction of the project are not available in the United States in reasonable and sufficient commercial quantity and satisfactory quality.

§ 317.17 Eligible project costs.

(a) The following types of project costs are eligible for funding under this part.

(1) Construction and facility improvement costs;

(2) Eligible expenses and payments under Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646);

(3) Costs for capital equipment not included in the construction contract;

(4) Costs for completing and updating plans, specifications, and estimates—where either architectural design/preliminary engineering or related planning has already been undertaken, and where additional architectural and engineering work or related planning is required to permit construction of the project;

(5) Other A/E costs such as inspection fees and test borings;

(6) Administrative costs including legal and audit costs; and

(7) Other costs not inconsistent with the Local Public Works Act and allowed by Federal Management Circular No. 74-4.

§ 317.18 Ineligible project costs.

(a) *Real property.* No part of any grant made under this part may be used for the acquisition of any interest in real property.

(b) *Maintenance.* No part of any grant made under this part may be used for the payment of maintenance costs in connection with a project constructed (in whole or in part) with Federal financial assistance under the Local Public Works Act.

(c) *Cost overruns.* No part of any grant made under this Act may be used for cost overruns for public works projects previously funded under this Act.

(d) *Prior expenses.* No part of any grant made under this part may be used for project costs for administration, plans, specifications, estimates or other A/E costs, which have been incurred prior to the date of original application.

(e) *Construction by State or local governments or Indian tribes.* No part of any grant made under this part may be used for the payment of construction activities directly performed by any department, agency, or instrumentality of any State or local government or any Indian tribe.

(1) "Construction activities" includes A/E services performed during and after construction of the project, such as project inspection or test borings. A/E work or related planning performed to complete or to update plans and specifications as described in paragraph (a)(4) of § 317.17 is not part of "construction activities" and is not subject to the prohibition of paragraph (e) of this section.

(f) *Interest.* No part of any grant made under this part may be used for interest on interim construction financing except for supplemental grants where authorized by other program legislation.

[42 FR 27432, May 27, 1977, as amended at 42 FR 56489, Oct. 26, 1977; 42 FR 57685, Nov. 4, 1977]

§ 317.19 Construction requirements.

(a) *Competitive bidding.* (1) Construction of each project funded under this part shall be performed by contract awarded by competitive bidding, unless:

(i) The Assistant Secretary makes a determination that, under circumstances relating to that project, a method of contract award other than competitive bidding is in the public interest.

(2) If the Assistant Secretary does not waive the competitive bidding requirement, the following procedures apply.

(i) Contracts for the construction of such projects shall be awarded on the basis of the lowest responsive bid submitted by a bidder meeting established criteria of responsibility.

(ii) The award of a contract for the construction of a project funded under this part may be subject to review by the Assistant Secretary. The Assistant Secretary may withhold his concurrence from the award of a contract for good cause.

(iii) No requirements or obligations shall be imposed as conditions precedent to the award of a contract or to the Assistant Secretary's concurrence in the award unless such requirements or obligations are lawful and set forth in the advertised specifications.

(b) *Minority business enterprise.* (1) No grant shall be made under this part for any project unless at least 10 percent of the amount of such grant will be expended for contracts with and/or supplies from minority business enterprises.

(2) The restriction contained in paragraph (b)(1) of this section will not apply to any grant for which the Assistant Secretary makes a determination that the 10 percent set-aside cannot be filled by minority businesses located within a reasonable trade area determined in relation to the nature of the services or supplies intended to be procured.

§ 317.20 Maximum project cost.

The maximum amount of financial assistance made available under this part should not exceed $5 million for each project; however, the Assistant Secretary may, in his discretion, waive this policy for good cause.

Subpart C—Application Procedure

§ 317.30 Revival of applications currently on file.

(a) Unfunded applications meeting the criteria described at § 317.12(a), with the exception of applications described in paragraph (b) of this section, will be revived if the project area in which such applicants are located receives a planning target or set-aside. EDA will revive these applications for consideration under the second round of funding of the Local Public Works program in the following manner.

(1) EDA will revise and update these applications to bring them into conformance with the new program requirements and procedures as described in these regulations.

(2) The applicant will provide EDA with such additional information and certifications, including revised project cost estimates, as required to bring the application into conformance with the legislative and administrative changes to the Local Public Works program.

(i) The information and certifications described in paragraph (a)(2) of this section will be provided to EDA on such forms and in such manner as the Assistant Secretary directs.

(b) Pocket of poverty applications currently on file and nonpocket of poverty applications currently on file for which applicants request consideration as pocket of poverty applications will be revived for consideration u round II of the Local Public W program in the following manner.

(1) Where an applicant requests of the pocket of poverty criteria in termining its project area, that quest will be granted only if the ap cant meets the requirements § 317.51(a)(1).

(2) All projects using the pocke poverty criteria must be located in community or neighborhood propo as the project area. Where necess applicants will revise their appl tions to locate the projects within community or neighborhood propo as the pocket of poverty area.

(3) Pocket of poverty applicants provide EDA with the following in mation:

(i) An exact description of the c munity or neighborhood proposed the project area;

(ii) The appropriate unemploym data for the project area obtai from the State Employment Secu Agency; and

(iii) Such additional information certifications, including revised pro cost estimates, as required to bring application into conformance with legislative and administrative chan to the Local Public Works program.

(c) Applications currently on file be deemed revived by EDA when relevant and necessary materials the reevaluation of the application received in the proper form manner from the applicant.

§ 317.31 New applications.

(a) New applications shall be ceived where necessary to use a Stat allocation or an applicant's planni target or an Indian tribe set-aside.

(b) Any new application under t part must be properly prepared on propriate forms, as prescribed by t Assistant Secretary, and must cont all the information and certificatio required by this part.

(c) New applications shall only submitted to the appropriate EDA gional Office as provided in 13 C 301.31.

(d) New applications shall be reco ed and deemed received upon their rival at the appropriate EDA Regional Office.

[42 FR 27432, May 27, 1977, as amended at 42 FR 35823, July 11, 1977]

§ 317.32 Acceptance of revived and new applications.

EDA shall endeavor, within five working days from the date a new or revived application is actually received by the appropriate Regional Office, to determine if the application has been completely and properly prepared. An application may be rejected (denied) unless it contains full and accurate information as required by this part. The Regional Director should notify the applicant if the application contains deficiencies and state what is needed to properly complete the application. EDA reserves the right during the 60 day period after receipt of an application to reject an application for substantially being incomplete, improperly prepared, or otherwise failing to meet the requirements of this part.

§ 317.33 Project areas.

The project area of eligible applicants shall conform to the following requirements:

(a) *Counties with no primary cities.* The project area shall be the county for all applicants.

(b) *Counties with one or more primary cities.*

(1) Projects located in the primary city: The project area shall be the city.

(2) Projects located outside primary cities: The project area shall be the balance of the county excluding the primary cities.

(c) *Pocket of poverty applicants.* The project area shall be the community or neighborhood of the primary city, as described in § 317.51(a)(1), in which the project is located.

(d) *Indian tribe applicants.* The project area shall be the reservation or tribal land on which the project will be located.

§ 317.34 Determination of unemployment data.

(a) In considering applications during the round II of funding, EDA shall utilize the following data:

(1) The average number of unemployed persons in the applicant's project area during the twelve most recent consecutive months available; and

(2) The average unemployment rate of the applicant's project area for the twelve most recent consecutive months available.

(b) Unemployment data for project areas of applications currently on file and new applications will be determined as follows:

(1) *Primary city applicants.* EDA shall utilize the appropriate data for the city from the Bureau of Labor Statistics of the Department of Labor.

(2) *Balance of county and county without primary city applicants.* EDA shall utilize the appropriate data from the Bureau of Labor Statistics of the Department of Labor.

(3) *Pocket of poverty applicants.* The applicant shall define the exact location of the community or neighborhood in which the project will be located. Unemployment data will be obtained from the State Employment Security Agency for that community or neighborhood.

(4) *Indian tribe applications.* The Assistant Secretary may use population data as a proxy for unemployment data. EDA shall utilize the appropriate data from the Bureau of Indian Affairs.

§ 317.35 Certifications.

An application shall be rejected unless it includes all the following materials:

(a) It contains adequate certification by the applicant and by any "other parties" as defined in 15 CFR Subtitle A, Part 8, that no person shall, on the grounds of race, color, sex (as required by section 110 of Pub. L. 94-369), or national origin, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under the proposed project.

(1) The application shall also contain an assurance that the applicant is not involved in any civil rights litigation; or, if it is involved in a lawsuit or Federal administrative action alleging discrimination, the applicant shall provide a brief narrative description of the action alleging discrimination and its outcome.

(2) The application shall also contain assurances of compliance with: Title VI of the Civil Rights Act of 1964; 28 CFR Part 42, Subpart F to the extent set forth in EDA's policies and guidelines; and Executive Order 11246 "Equal Employment Opportunities."

(b) It contains a certification by the applicant that construction on the project has not yet been initiated unless the provisions of § 317.15(b)(1) or § 317.43(b)(3) are met.

(c) It contains a certification, satisfactory to the Assistant Secretary, that on-site labor can begin within ninety days of project approval.

(d) Where applicable, it contains a certification that the applicant has related the proposed project to existing approved plans and programs of a local community development or regional development nature so as to avoid harmful or costly inconsistencies or contradictions.

(e) Where appropriate, it contains certification and evidence that the proposed project will promote or advance longer range plans and programs.

(f) It contains certification by the properly authorized official of the Federal agency or State or local government, that no funds budgeted and available or otherwise specifically committed for the project applied for in its application shall be reduced, diminished, or replaced by funds requested under this part, except to the extent that the Local Public Works program share of the project is increased by a change by EDA in the applicant's or endorser's planning target.

(1) With respect to supplemental grants under § 317.13(b)(1), this certification is not necessary if the applicant has obtained a waiver from the Assistant Secretary under § 317.13(b)(1) (i)(A).

(g) It contains adequate assurances that all laborers and mechanics employed on the proposed project will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5).

(h) It contains a certification b
applicant that no contract fo
project will be awarded to a b
who will employ illegal aliens.

(i) It contains adequate assu
that the project will be constr
from raw materials mined or pro
in the United States and from U
States manufacturers substa
made from materials mined, pro
or manufactured in the United S
unless the Assistant Secretar
made a determination under §
(c)(1) that this requirement is n
plicable to the applicant's projec

(j) Unless the Assistant Sec
has made a determination of i
cability under § 317.19(b)(2), i
tains certification satisfactory
Assistant Secretary that at lea
percent of the amount of the
will be expended for contract
and/or supplies from minority
ness enterprises.

(k) It contains certification s
tory to the Assistant Secretar
the project will be designed an
structed in accordance with
quirements for providing access
physically handicapped and eld
contained at 42 U.S.C. 4151 et se

(1) The Architectural and Tr
tation Barriers Compliance Bo
tablished by the Rehabilitation
1973, is authorized to insure th
construction and renovation do
suant to any grant made und
Local Public Works Act compli
the accessibility standards for
buildings and facilities issued
the Act of August 12, 1968.

(l) Where an application u
pocket of poverty project area,
tains certification satisfactory
Assistant Secretary that empl
engendered by the project wil
fered preferentially to the resi
the neighborhood or com
which defines the project area.

(m) Where an application in
project normally funded by
Federal agency, it contains c
tion as required in § 317.13 (a
(b).

(n) It contains certification t
cial consideration consistent
isting applicable collective ba
agreements and practices, s
given to the employment

project of qualified disabled veterans, as defined in 38 U.S.C. 2011(1), and to qualified Vietnam-era veterans, as defined in 38 U.S.C. 2011(2)(A).

(1) Have a disability rating of 30 percent or more, or

(2) Served on active service for more than 180 days in Vietnam and were discharged or released from service—other than dishonorably—within 48 months.

[42 FR 27432, May 27, 1977, as amended at 42 FR 35823, July 11, 1977; 42 FR 38836, Aug. 1, 1977]

§ 317.36 False or inaccurate statements.

(a) An application shall be rejected unless it is, in the opinion of the Assistant Secretary, accurate and complete.

(b) Applicants should be advised that false representations and/or certifications in connection with applications for assistance under this part may be the basis for criminal liability under Title 18 of the United States Code.

§ 317.37 Applicant's priority rating of projects.

(a) An applicant who has more than one application eligible for funding under the second round of the Local Public Works program shall submit as part of each such application its priority rating for each project for which it has applied.

(b) State governments, county governments, primary city governments, and any general purpose unit of local government may endorse a project of another applicant. If such a project is funded, it will apply against the planning target of the endorsing applicant but not the planning target of the receiving applicant.

§ 317.38 Amendment of existing applications.

Applications on file from round I may be amended to modify or change the project when, in the opinion of the Assistant Secretary, a compelling reason for such modification or change exists.

Subpart D—Allocation of Program Funds

§ 317.40 Allocation of funds to the States.

(a) Subject to program administrative costs, statutory minimum and maximum allocation requirements and statutory set-asides, 65 percent of the amounts appropriated for round II of the Local Public Works program will be allocated to each State based on its share of the total number of unemployed persons in all the States; the remaining 35 percent of the amounts appropriated for round II of the Local Public Works program will be allocated to those States with an average unemployment rate for the preceding twelve month period in excess of six and one-half percent (6½ percent) on the basis of the relative severity of unemployment in such States.

(b) Amounts allocated to the States according to this formula constitute State planning targets.

§ 317.41 Statutory minimum and maximum State allocations.

(a) The minimum allocation to each State of all amounts appropriated after the date of enactment of the Public Works Employment Act of 1977 to carry out this part shall be determined as follows:

(1) Subject to the provisions of paragraph (a)(2) of this section, each State will receive at least three-quarters of one percent of such amounts appropriated to carry out this part.

(2) Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands, in the aggregate, shall receive not less than one-half of one percent of such amounts appropriated to carry out this part.

(i) Population and other factors, as may be determined by the Assistant Secretary, will be used to establish planning targets for these territories.

(b) States whose unemployment data was converted for the first time under a new methodology to the benchmark data of the current population survey annual average compiled by the Bureau of Labor Statistics shall receive a percentage of funds under round II at least as great as the percentage of funds allocated to that

State under round I prior to January 1, 1977.

(c) The maximum allocation for any State of all amounts appropriated after the date of enactment of the Public Works Employment Act of 1977 to carry out this part shall be twelve and one-half percent of such appropriation.

§ 317.42 Indian tribe set aside.

(a) The maximum allocation of all amounts appropriated after the date of enactment of the Public Works Employment Act of 1977 for projects sponsored by Indian tribes shall be two and one-half percent of such appropriation.

(b) All projects applied for by Indian tribes will be funded from this allocation, with the exception of those projects which qualify for funding under § 317.43.

(c) Each Indian tribe will receive a planning target determined in the following manner.

(1) Subject to the provisions of paragraph (c)(2) of this section, each Indian tribe's planning target will be based on population data, as determined by the Assistant Secretary.

(2) No Indian tribe will receive a planning target exceeding twelve and one-half (12½) percent of the amount determined by paragraph (a) of this section plus the amount of round I funds expended on Indian applications.

(3) Indian tribe planning targets will reflect the total six (6) billion dollar Local Public Works program authorization. Projects which were selected for funding during round I of the program will be deducted from the applicant's planning target.

(4) These planning targets will be ranked nationally and projects will be selected from high ranking targets until the amount of the set-aside is expended.

(5) Certain eligible Indian tribe applicants will not receive planning targets due to the procedure described in paragraphs (c)(3) and (c)(4) of this section which will result in insufficient funds.

(d) In the event applications have not been filed to exhaust the planning targets established under this section by September 1, 1977, such planning targets may be administratively reapportioned by the Assistant Secretary.

[42 FR 27432, May 27, 1977, as amended at 42 FR 35823, July 11, 1977]

§ 317.43 Procedural errors set aside.

(a) An applicant who made an application before December 24, 1976 and whose application was not received, was not considered, or was rejected solely because of an error by an officer or employee of the United States may petition the Assistant Secretary to reconsider his application, subject to the provisions of § 317.61(b).

(b) In order to be funded from this set-aside, a project must meet all of the following requirements:

(1) The project would have been selected for funding under round I of the Local Public Works program but for the error described in paragraph (a) of this section;

(2) The project has been identified by EDA as eligible for funding from the procedural error set-aside; and

(3) The project met all the requirements of the Local Public Works Act as in effect at the time of the error.

(c) Not to exceed seventy (70) million dollars may be used to fund projects under the authority of this section.

Subpart E—Planning Targets

§ 317.50 General considerations.

In order to insure an equitable geographic distribution of funds, EDA has established planning targets for States, sub-State areas and sub-State applicants.

(a) Sub-State area planning targets are computed for project areas which have unemployment rates equalling or exceeding the lower of 6.5 percent or the State average unemployment rate.

(1) Within each State, these planning targets will be ranked and projects will be selected from high ranking areas until the amount of planning target is expended.

(2) Sub-State area planning targets and sub-State applicant planning targets will reflect the total six (6) billion dollar Local Public Works program authorization, constructively following

he sub-State 65/35 formula, as set orth in § 317.52(a), for round I funds. rojects which were selected for fund- ng during the round I of the program ill be deducted from the sub-State rea planning targets and sub-State pplicant planning target.

(3) Certain eligible sub-State areas nd sub-State applicants will not re- eive planning targets due to the pro- edure described in paragraphs (a) (1) nd (2) of this section which will esult in insufficient funds.

(4) A minimum planning target level f 75,000 dollars will be set in order to arry out the public works aspect of his program. In the case of areas hich would receive a planning target elow this minimum, no planning arget would be established.

(i) Planning target funds below the 5,000 dollars minimum will be admin- tratively reapportioned to the ounty government.

(A) If no county government exists, he funds will be administratively eapportioned.

(ii) County government planning arget funds below the 75,000 dollars inimum will be administratively eapportioned by the Assistant Secre- ary.

(b) Funds requested for projects may ot exceed the appropriate planning argets.

(c) EDA will use sub-State area and pplicant planning targets as aids in he distribution of funds under this art. These planning targets do not, owever, constitute entitlements. The ssistant Secretary reserves the right o adjust these planning targets as ecessary to assure that each eligible rea and applicant receives a planning arget commensurate with its distress. f an eligible area or applicant does ot receive a planning target which re- lects its level of distress due to miscal- ulation, the Assistant Secretary may e-adjust other sub-State planning tar- ets to rectify the miscalculation.

42 FR 27432, May 27, 1977, as amended at 2 FR 35823, July 11, 1977]

317.51 State planning target.

Each State's overall planning target as established pursuant to the alloca- ion formulae described in §§ 317.40 nd 317.41, as appropriate. From each State's planning target, the following Statewide planning targets will be deducted.

(a) *Pocket of poverty planning target.* An amount, determined by multiplying the number of primary cities as described in paragraph (a)(1) of this section by one (1) million dollars, will be deducted to fund applications from pocket of poverty areas. However, not more than twenty million dollars shall be available in any one State to fund these projects.

(1) Projects to be funded from this deduction must be located in a city which did not receive a planning target, except that a primary city which did not receive a planning target because its round I approvals exceeded its projected planning target is not eligible to submit pocket of poverty applications.

(2) Each pocket of poverty area must have a population of 4,000 or more persons and an unemployment rate of at least 8.5 percent for the most recent twelve months. A pocket of poverty must be a contiguous area and separate and distinct from other pocket of poverty areas. A pocket of poverty area may not be subdivided.

(i) In any State receiving a planning target under paragraph (a) of this section, the Assistant Secretary may waive the 8.5 percent unemployment rate requirement if he determines that an insufficient number of applications meeting this criterion have been submitted.

(3) Applicants with planning targets may fund projects in pocket of poverty areas from their planning targets.

(b) *State government planning target.* Except as the Assistant Secretary determines for the Commonwealth of Puerto Rico, State governments will be given a planning target which will be eight (8) percent of the total State allocation. The amount of this planning target is based on the approximate proportion of the dollar value of State government applications on file to the dollar value of the total number of applications from all States on file from round I.

(c) In the event applications have not been filed to exhaust the planning targets established under this section by September 1, 1977, such planning targets may be administratively reapportioned within the State by the Assistant Secretary.

[42 FR 27432, May 27, 1977, as amended at 42 FR 35823, July 11, 1977]

§ 317.52 Sub-State area planning targets.

The amount of each State's allocation available for sub-State area planning targets will consist of the State's statutory allocation less the amount of the planning targets described in § 317.51.

(a) EDA has established planning targets for eligible sub-State areas, subject to the provisions of § 317.50(a), based on the sub-State 65/35 formula, which is the relative need of an area as determined by its number of unemployed persons compared to the number of unemployed persons in all eligible areas of the State and its unemployment rate compared to the lower of 6.5 percent or the State unemployment rate. Planning targets have been established in this manner for the following types of areas:

(1) Primary city;

(2) Balance of county;

(3) County with no primary cities.

(b) The sub-State areas described in paragraph (a) of this section will be ranked according to their respective planning targets which will reflect the relative distress in each of the areas.

[42 FR 27432, May 27, 1977, as amended at 42 FR 35823, July 11, 1977]

§ 317.53 Sub-State applicant planning targets.

EDA has divided the sub-State area planning targets into sub-State applicant planning targets. Subject to the provisions of § 317.50, EDA has established these applicant planning targets for the following types of applicants.

(a) *County government.* This planning target will be determined for each State, based on the relative activity of county governments as determined by the dollar value of county government applications filed with EDA during round I compared to the total dollar value of applications filed by all applicants, with the exception of Indian tribes, in that State during round I. Subject to the provisions regarding school district participation as set forth in § 317.55, this planning target shall be available for funding projects of the county government.

(b) *Primary city government.* Subject to the provisions of § 317.55 regarding school district participation and subject to any incorporated area in the city which will share in the planning target, this planning target shall be available for funding projects of the city government.

(c) *Non-primary cities/townships located in balance of county and county without primary city areas.* The funds allocated to the balance of county and county without primary city have been further distributed to non-primary cities and townships within these areas as applicant planning targets.

(1) These applicant planning targets are based on the unemployment data of the non-primary city or township, calculated by EDA according to the census share method and according to the sub-State 65/35 formula. Where unemployment data is unavailable, the planning target funds will be administratively reapportioned.

(2) Normally, EDA has established these planning targets for non-primary city/township applicants which submitted applications in round I and which meet the requirements of § 317.50(a)(4). When an area's planning target funds exceed existing applications on file by 25 percent or $200,000, whichever is greater, the surplus funds will be reallocated as set forth in § 317.54.

(3) Subject to the provisions of § 317.55 regarding school district participation, these applicant planning targets shall be available for projects of the non-primary city or township.

(d) In the event applications have not been filed to exhaust the planning targets established under this section by September 1, 1977, such planning target funds may be administratively reapportioned by the Assistant Secretary.

[42 FR 35823, July 11, 1977]

§ 317.54 Reallocation of funds.

Surplus funds described at § 317.53(c)(2) will be reallocated as follows:

(a) If the amount of the surplus is sufficient, all pending applications in the balance of county or county without primary city area will be funded.

(1) After all pending applications have been funded, any further surplus will be reallocated to the county government.

(b) If the amount of the surplus is not sufficient to approve all pending applications, non-primary city/township applicants with applications will be ranked in order in accordance with the 65/35 formula as set forth in § 317.52(a) and funded until the surplus is expended.

(1) Any surplus remaining after the ast project is approved will be allocated to the next ranking applicant with a project.

(2) In the event two or more projects rank equally, the surplus will be divided equally among them.

(c) If there are no pending applications in the balance of county or county without primary city area, the surplus will be administratively reallocated to the county government.

42 FR 35823, July 11, 1977]

§ 317.55 School district participation in planning targets.

(a) Subject to the provisions of this section, school districts may share in the planning targets of:

(1) Primary cities or non-primary cities/townships; and

(2) County governments.

(b) In order to participate in these planning targets, the school district must have authority under local law to file an application.

(c) For a school district to share in the planning target of a primary city or non-primary city/township, the school district project must principally serve the residents of the primary city or non-primary city/township, e.g., at east 50 percent of the students served by a school project must be residents of that primary city or non-primary city/township.

(1) A school district project may be eligible to share in the planning target of more than one non-primary city/township if it principally serves those applicants.

(d) For a school district to share in the planning target of a county government, the school district must:

(1) Serve the entire county; or

(2) In the event the school district is located in a county with primarily unincorporated land area, the school district must, in order to share in the planning target of that county, meet the following requirements:

(i) The school district demonstrates that more than 50 percent of the area of the county is unincorporated;

(ii) The school district serves at least 40 percent of the population of the unincorporated area; and

(iii) The school district's project principally serves the residents of the unincorporated area, e.g., at least 50 percent of the students served by a school project must be residents of the unincorporated area.

(e) School districts will share in the planning targets listed in paragraph (a) of this section by jointly prioritizing their projects with the projects of those applicants whose planning targets they are sharing and by submitting a unified list of priority projects as required by § 317.37.

(f) Should the school district and the applicant whose planning target it shares fail to come to agreement with respect to prioritizing their projects, EDA will select projects according to factors which include, but are not limited to:

(1) Job creating potential;

(2) Time necessary to complete the project;

(3) Energy conservation;

(4) Long term economic benefits; and

(5) Critical local needs.

[42 FR 35824, July 11, 1977]

Subpart F—Project Selection Procedure

§ 317.60 Conserving energy.

(a) In making grants for projects for construction, renovation, repair or other improvement of buildings, EDA shall also give consideration as between such building projects to those projects which will result in conserving energy. Such projects include, but are not limited to, projects to redesign existing public facilities for energy conservation purposes and projects using alternative energy systems.

(b) In giving such consideration EDA will permit increased funding for projects which meet the provisions of this section subject to the requirements of § 317.50(b).

§ 317.61 Projects selected from national set-asides.

(a) *Indian set-aside.* Subject to the provisions of § 317.42(c) each Indian reservation or tribal land has a planning target.

(1) In approving projects under this set-aside, EDA will take into consideration the number and dollar amount of projects approved under round I.

(b) *Procedural error set-aside.* (1) In order to be funded from this set-aside, a project must meet all the following conditions.

(i) The project must be eligible under § 317.43.

(ii) The project is located in an area which does not have a planning target.

(iii) The project met the requirements of the Local Public Works Capital Development and Investment Act of 1976, as enacted on July 22, 1976.

(2) Error projects located in eligible areas which receive planning targets will be funded from State and sub-State planning targets, but only if chosen by their applicants as priority projects.

(i) In the event the applicant's planning target is insuffcent to fund the error project completely, the applicant may request the Assistant Secretary to fund the remainder from the error set-aside.

(ii) Projects funded in this manner will be counted against the appropriate area and applicant planning targets or set-asides as calculated on the basis of the total Local Public Works Act authorization.

(3) In exercising its privilege of prioritizing projects, an applicant shall be under no obligation to request priority for any project which may have been previously denied in error, but such choice of another or other projects shall be deemed a waiver of any claim of entitlement or priority for funding of any such project which may have been previously denied as a result of error.

(4) Projects eligible for funding under this section must have met all the requirements of the Local Public Works Act as in effect at the time of the error.

(5) Projects eligible for funding under this sub-section will not be funded in an amount greater than that specified in the original application.

[42 FR 27432, May 27, 1977, as amended at 42 FR 35824, July 11, 1977]

§ 317.62 Projects selected from Statewide planning targets.

(a) *Pocket of poverty planning target.* Each primary city eligible for funding under § 317.51(a) will submit to EDA a description of its pocket of poverty area, setting forth the numbers and rates of unemployment and total population for that area. Such figures must be certified by the State Employment Security Agency. EDA will then assign a planning target to each pocket of poverty based on its relative needs as measured by its number and rate of unemployment.

(b) *State government planning target.* The Governor shall submit a priority ranking of State government projects up to the amount of the State government planning target, provided such projects are located in or primarily serve areas with unemployment rates equally or exceeding the State's average unemployment rate or 6.5 percent, whichever is lower.

(1) EDA will select projects in accordance with the Governor's priorities up to an amount as close as is administratively feasible to the amount of the State government planning target.

[42 FR 27432, May 27, 1977, as amended at 42 FR 35824, July 11, 1977]

§ 317.63 Projects selected from sub-State applicant planning targets.

(a) Subject to the provisions of §§ 317.50, 317.53 and 317.55, EDA will select projects in accordance with the sub-State applicant's unified priority list of projects up to the amount of the applicant's planning target.

(1) If an applicant has already exceeded its planning target in round I, it will receive no further projects. Similarly, once an applicant has reached its planning target with a round II project, no further projects will be selected.

[42 FR 35824, July 11, 1977]

§ 317.64 Undue concentration.

The Assistant Secretary reserves the right to vary the selection procedure as necessary to avoid undue concentration of funds and as necessary to comply with the objectives of the Act.

[42 FR 35824, July 11, 1977]

§ 317.65 Similar applications.

Any application for a project which serves similar needs, in the same general area, as an existing project or application under the Local Public Works program or any other program administered by the Economic Development Administration may be denied by the Assistant Secretary for that reason.

Subpart G—General Requirements

§ 317.70 Environmental considerations.

(a) *The National Environmental Policy Act.* (1) The Local Public Works Act requires applications to be processed within 60 days of their acceptance. EDA will not be able to prepare environmental impact statements for those projects which may significantly affect the quality of the human environment. However, to the fullest extent possible within this time period, EDA will analyze a project's potential environmental impacts and give appropriate consideration to environmental impacts in making its final decisions.

(2) In order that EDA may conduct its environmental analysis of proposed projects, applicants shall include the following materials with their application:

(i) A description of those elements of the proposed project which will have an impact on the environment, the nature of the environment which will be affected, and data on the expected environmental impact;

(ii) Alternatives to the proposed project;

(iii) Any environmental analysis previously conducted by local, State, Federal agencies; and

(iv) Evidence of public reaction to the project, such as transcripts of local public hearings held on the proposal.

If the materials required by paragraphs (a)(2) (iii) and (iv) of this section are not available, the applicant must so certify in the application.

(3) EDA will independently review and analyze environmental information submitted by applicants.

(i) Where appropriate, EDA, within the 60 day limit, may seek the views of other government agencies which have jurisdiction by law or special expertise with respect to any environmental impact involved.

(ii) If a project appears to be highly controversial for environmental reasons and there is a need to further understand the basis of the controversy, EDA may, within the 60 day limit, request the views of concerned residents through a newspaper notification or a public information meeting held near the project site.

(4) EDA shall deny an application if, after consideration of the benefits of a project against any environmental costs, it concludes that the environmental costs exceed the benefits. EDA may deny any application solely on the basis that its environmental impact analysis discloses that unacceptable adverse impacts will or are likely to result. EDA, where necessary, may condition approval of a project upon the adoption of specified measures designed to mitigate any adverse environmental impacts.

(b) *The National Historic Preservation Act.* (1) Applicants shall include with their applications either a statement of their State Historic Preservation Officer's views of the proposed project or shall certify that their State Historic Preservation Officer was provided with a detailed project description and request for comments prior to the application's submission to EDA. Such description shall include:

(i) A narrative of the elements of the project and its location;

(ii) A map of the project site and surrounding area indicating the specific location of the project site in relation to adjacent streets and other identifiable objects;

(iii) Line drawings or sketches of the project; and,

(iv) If the building demolition or renovation is involved, photographs of the affected properties.

(2) If necessary, EDA will attempt to complete the coordination of proposed projects with the Advisory Council on Historic Preservation. EDA will use the results of this coordination process, even though completion of this process may not be possible, as a factor in making a final decision on the project.

§ 317.71 Compliance with other Federal requirements.

Each applicant shall, as a condition to its receipt of a grant under this part, comply with the following relevant Federal requirements.

(a) All labor standards including those relating to the payment of wages, working conditions, anti-kickback prohibitions and equal employment as provided 13 CFR 309.6.

(b) Those requirements concerning relocation and related payments to all persons displaced as a result of the development of a public works project with funds received under this part, as provided for in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 et seq., and 13 CFR Part 310.

(c) If a project involves the construction of a detention facility, the applicant must certify that the project complies with those sections of Part E of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, found at 42 U.S.C. 3750(b) (1) and (4)-(9).

(d) The provisions of OMB Circular A-95, with the following modification.

(1) Applicants must submit their full applications or notifications of intent to apply to the appropriate clearinghouse as early as possible.

(2) Upon submission of an application to EDA, the application must certify that it has submitted the full application to the appropriate clearinghouse.

(3) EDA may begin processing the application upon its receipt but wil make no final approval of an application until 30 days after its receip unless clearinghouse response is received before 30 days have elapsed.

(4) Applications received by EDA need not have State application identifier numbers.

(5) Clearinghouse comments will b submitted directly to EDA; EDA wil consider such comments until it ha finished processing the application.

(e) All environmental requirement to the maximum extent possible, a determined by the Assistant Secretary, including, but not limited to:

(1) The National Environmenta Policy Act of 1969; as amended (4 U.S.C. 4321 et seq.) and EDA's requir ments found in § 317.70.

(2) The Clean Air Act, as amende (42 U.S.C. 1857-1858a);

(3) The Federal Water Pollutio Control Act, as amended (33 U.S.C 1251-1376);

(4) The National Historic Preserv tion Act of 1966 (16 U.S.C. 470 et seq and EDA's requirements found § 317.70;

(5) The Wild and Scenic Rivers A (16 U.S.C. 1271-1287);

(6) The Endangered Species Act 1973 (16 U.S.C. 1531 et seq.);

(7) The Historical and Archeologic Data Preservation Act, as amended (U.S.C. 469 et seq.); and

(8) The Safe Drinking Water Act (U.S.C. 300f-j9).

(f) 13 CFR 309.9, entitled "Recor and audit."

(g) 13 CFR 309.27, entitled "La use near Federal airfields."

(h) 13 CFR 309.26, entitled "Proj modification."

(i) 13 CFR Part 314, entitled "Pr erty management standards" exce 13 CFR 314.6(a), 13 CFR 314.6(b), a 13 CFR 314.50.

(j) The National Flood Insura Program and EDA's requirements garding flood hazards found at CFR 309.15.

(k) Other laws affecting this p gram.

[42 FR 27432, May 27, 1977, as amended at 42 FR 35824, July 11, 1977]

§ 317.72 Transfer of grant awards to drought-related projects.

(a) Subject to the Assistant Secretary's approval, applicants who have been awarded a grant, or who have so prioritized a project as to be tantamount to a grant award by EDA, may request EDA to transfer the funds from the project listed on their application to one or more other projects intended to alleviate drought or other emergency or disaster related conditions or damage.

(b) The Assistant Secretary may approve such a transfer after making the following determinations:

(1) The Federal cost in the aggregate of such project or projects will not be increased beyond the cost of the original award;

(2) Construction on the project or projects proposed for substitution can begin within ninety days; and

(3) The project or projects proposed for substitution will in fact aid in alleviating drought or other emergency or disaster related conditions or damage.

(c) Section 106(a) of the Local Public Works Act and § 317.15(a) will not apply to projects substituted under the authority of this section.

§ 317.73 Lease of project facilities.

Normally, public works projects constructed with funds under this part must retain their public character. The project facility may be leased under the following conditions.

(a) The project facility may be leased by the grantee to a non-profit operator providing the applicant maintains a continuing significant economic interest in the project and is not acting simply in a passive role for a prospective lessee, and such facility is used for the purpose of the grant.

(b) The project facility may be leased by the grantee to a profit making operator provided all of the following conditions are met:

(1) The lease is incidental to the project and not its principal purpose;

(2) The lease does not change the public nature or character or the purpose of the project as a whole; and

(3) The applicant maintains a continuing significant economic interest in the project and is not acting simply in a passive role as applicant for a prospective lessee.

§ 317.74 Final determination.

(a) All applications for assistance under this part shall be processed by the appropriate EDA Regional Office.

(b) The Regional Director shall notify the applicant, in writing, when its application has been rejected and state the reasons therefor.

(c) The Regional Director shall forward to the Assistant Secretary in Washington, D.C., all applications which he deems are properly completed and eligible for assistance under this part.

(d) The Assistant Secretary shall review all applications received from the Regional Directors and make the final determination.

(e) If no determination has been made by the end of the sixtieth day after the application was received, the application will be deemed to be approved.

§ 317.75 Suspension and termination.

(a) *Suspension or termination for cause.* EDA may initiate a suspension or termination of a project approved under this part for failure by the grantee to adhere to the requirements of the grant. EDA shall promptly notify the grantee in writing of the suspension or termination, specifying the reasons for the action and its effective date. Payments made to the grantee or recoveries by EDA under grants suspended or terminated for cause shall be in accord with the legal rights and liabilities of the parties.

(b) *Suspension or termination for convenience.* EDA or the grantee may initiate a suspension or termination of a project approved under this part when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the conditions of the action, including the effective date, and in the case of partial suspension or termination, the portion to be suspended or terminated. The grantee shall not incur new obligations for the suspended or terminated portion, after the effective date, and shall cancel as many outstanding obligations as possible. EDA shall allow full credit to the grantee for the Federal share of the non-cancellable obligations which were properly incurred by the grantee prior to suspension or termination.

Subpart H—Eligibility of Non-Profit Entities

§ 317.80 Grants for non-profit entities.

After September 30, 1977, grants may be made from appropriations under the Local Public Works Act to States or local governments for projects for the construction, renovation, repair, or other improvements of health care or rehabilitation facilities owned and operated by private non-profit entities.

(a) In the event that EDA has obligated all funds appropriated under this Act prior to or on September 30, 1977, this section will not take effect.

[42 FR 27432, May 27, 1977, as amended at 42 FR 35824, July 11, 1977]

PART 318—COMMUNITY EMERGENCY DROUGHT RELIEF PROGRAM

Sec.
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bursement.
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AUTHORITY: Sec. 701, Pub. L. 89-136, 7
Stat. 570 (42 U.S.C. 3211); Pub. L. 95-31, 9
Stat. 169 (42 U.S.C. 5184).

SOURCE: 42 FR 27446, May 27, 1977, unles
otherwise noted.

§ 318.1 Purpose.

The purpose of this part is to se
forth the requirements and procedure
pursuant to which eligible applican
may receive grants and loans unde
Title I of the Community Emergenc
Drought Relief Act of 1977.

§ 318.2 Definitions.

"Act" as used in this part means th
Community Emergency Drough
Relief Act of 1977, Pub. L. 95-31.

"Assistant Secretary" means the A
sistant Secretary of Commerce f
Economic Development or his de
gate.

"Designated drought impacted are
means any area which has been dete
mined eligible for assistance und
this part pursuant to the criteria co
tained in § 318.3.

"Indian tribe" means the governi
body of a tribe, nonprofit Indian c
poration (restricted to Indians), Indi
authority or other tribal organizati
or entity or Alaskan native village.

"Political subdivision of a Sta
means the authorities established
authorized by State law including,
not limited to, special districts wh
areas of jurisdiction include popu
tions of 10,000 or more persons.

"State" includes the several Sta
the District of Columbia, the C
monwealth of Puerto Rico, the Vir
Islands, Guam, and American Samo

§ 318.3 Designation of eligible areas.

(a) The Assistant Secretary may
ignate any area a drought impa
area if he finds that a major and
tinuing adverse drought condi
exists and is expected to continue
cause significant hardships in the
fected area.

(b) The Interagency Drought E
gency Coordination Committee

1977, of which EDA is a member with delegated authority to designate, may designate any area a drought impacted area according to the criteria and procedures it has established.

(c) If an area which has requested designation from the Interagency Drought Emergency Coordinating Committee of 1977 does not receive designation, it may apply to EDA for designation. Such designations will be made on the basis of the criteria contained in paragraph (a) of this section.

§ 318.4 Eligible applicants.

The following entities located in areas designated under § 318.3 are eligible to apply for assistance under this part:

(a) States;

(b) Political subdivisions of States with populations of 10,000 or more persons;

(c) Indian tribes;

(d) Public or private non-profit corporations; and

(e) Water districts except for those which are organized as profit-making bodies.

(Dept. of Commerce Organization Order 10-4 (Sept. 30, 1975) as amended, 40 FR 56702)

[42 FR 35634, July 11, 1977]

§ 318.5 Eligible projects.

(a) Projects eligible for assistance under this part are projects which, in the opinion of the Assistant Secretary, will make substantial contributions to the relief of existing or threatened drought conditions in designated areas.

(1) Such assistance shall be for projects that conserve water or implement short-term actions to augment an applicant's water supplies where there are severe problems due to water shortages resulting from the 1976-1977 drought.

(2) Assistance may be provided to those applicants that demonstrate a threat to the health and safety of their inhabitants or other severe problems, such as major adverse economic impact, as a result of the 1976-1977 drought. Such threats must be fully supported by factual information.

(3) Projects eligible for assistance may include:

(i) Projects for the improvement, expansion or construction of water supplies;

(ii) Projects for the purchase and transportation of water; and

(iii) Projects which will promote water conservation.

(b) Assistance shall also be available under this part to reimburse eligible applicants for projects conducted during fiscal year 1977 but before the passage of this Act, if the Assistant Secretary determines such projects are compatible with the broad purposes of this Act.

§ 318.6 Grants.

(a) The Assistant Secretary may make direct grants to any eligible applicant for the purpose of carrying out eligible projects under this part.

(b) The grant share of a project made under this part shall not exceed fifty (50) percent of the allowable project costs.

(1) An eligible applicant may use in-kind services as its local contribution, pursuant to the provisions of § 318.9.

§ 318.7 Loans.

(a) The Assistant Secretary may make loans to any eligible applicant for the purpose of carrying out eligible projects under this part.

(b) No loans under the authority of this part may be made for periods exceeding forty (40) years from the date of the signing by the borrower of the evidence of indebtedness, except as provided for by § 318.15.

(c) Loans under the authority of this part shall bear interest at a rate of five (5) percent per annum.

§ 318.8 Security.

(a) A loan may be secured if the Assistant Secretary determines such security is necessary.

(b) In order to encourage financial participation in a loan project by other lenders and investors and to the extent necessary, the loan may be repayable only after other loans made in connection with the project have been repaid in full. The lien position of EDA security on the loan, if any, may be subordinated and made inferior to lien or liens securing other loans and may provide for future subordination pursuant to conditions in the loan.

§ 318.9 Previously acquired assets as part of total project cost.

(a) The fair market value of land and facilities (including buildings, machinery, and equipment) acquired by the recipient before receipt of the assistance under this part may be allowed as part of the total project cost if the following conditions are met:

(1) The land and/or facilities are so physically related to the project as to be required for the successful functioning of the project; and

(2) The project cost does not include more land and/or facilities than EDA determines to be reasonably necessary for the successful completion of the project to be constructed.

(b) EDA will not grant or lend more than the difference between the total project cost and the value of such previously acquired land and/or facilities.

(c) The fair market value of such previously acquired land and/or facilities will be set at a conservative figure determined by EDA appraisal or by an independent appraiser satisfactory to EDA.

(d) Previously acquired easements and rights-of-way may be included in project costs if they meet the requirements of paragraph (a) of this section. However such previously acquired easements and rights-of-way will not be included in project costs at a sum in excess of their fair market value. In addition, the successful construction of the project must require inclusion of the easements and rights-of-way.

§ 318.10 Amount of grant assistance.

(a) The amount of grant assistance for a project shall not exceed fifty (50) percent of the total allowable project cost.

(b) The amount of grant assistance available for projects receiving priority under § 318.13 shall be determined as follows: *Provided, however,* That normally no such project will receive less than twenty (20) percent of the total allowable project cost in the form of grant assistance.

(1) Calculate one (1) percent of the median family income of those individuals located within the service area covered by the project multiplied by the number of families or users served; this amount is the applicant's annual available debt service.

(2) Calculate the amount needed annually to service existing indebtedness. Where there are overlapping jurisdictions providing utilities for the applicant's area, EDA will also include in this calculation the debt service requirements for the existing debt of all jurisdictions involved.

(3) Subtract from the applicant's annual available debt service calculated under paragraph (b)(1) of this section the amount needed to service indebtedness calculated under paragraph (b)(2) of this section. This is the net annual available debt service.

(4) Calculate the amount of debt that could be amortized during the estimated useful life of the project with the net annual available debt service calculated under paragraph (b)(3) of this section.

(5) Subtract from the total allowable project cost the amount determined in paragraph (b)(4) of this section. The remainder will be the maximum amount of grant assistance for the project.

(c) All other eligible projects shall receive only loan assistance under this part. However, the Assistant Secretary may provide grant assistance to these projects up to an amount not to exceed fifty (50) percent of total allowable project cost and not to exceed the amount permitted pursuant to the calculation set forth in paragraph (b) of this section. In determining the amount of grant assistance under this subsection the Assistant Secretary may give consideration to one or more of the following factors:

(1) The relative distress of the area based on the rate of unemployment, the median family income, and the nature of the project to be assisted;

(2) The type of user being benefited from the project; and

(3) The amount of revenues that can be reasonably anticipated as a direct result of the project.

§ 318.11 Financial assistance from other sources.

Subject to the fifty (50) percent maximum limitation on grants and further subject to the limitation that no projects shall be funded over one hundred (100) percent of the project cost, grant assistance under this Act will not be reduced by virtue of the applicant receiving financial assistance from Federal, State or local governments or from any other source.

§ 318.12 Considerations in evaluating application.

In making grants and loans under this part, the Assistant Secretary shall take into consideration the following factors:

(a) The relative needs of the designated areas from which applications are received; and

(b) The appropriateness of the project for relieving drought conditions.

§ 318.13 Priority among applications.

In making grants and loans under
his part, the Assistant Secretary shall
ive priority and preferential treat-
nent to applications for projects pri-
narily designed to meet existing or
mmediately foreseeable threats to
nealth and public safety.

318.14 Ineligible projects.

(a) Projects for which the applicant
annot certify to the satisfaction of
he Assistant Secretary that construc-
ion work can be completed by April
0, 1978 are ineligible for assistance
nder this part, except that the Assist-
nt Secretary may, in exceptional cir-
umstances, extend the time in which
he work on the project must be com-
leted.

(b) Projects which are primarily in-
nded to provide a water supply ca-
acity beyond the immediate needs of
e applicant's users resulting from
e 1976-1977 drought are ineligible
r assistance under this part.

318.15 Powers of the Assistant Secretary.

In performing his duties under this
t, the Assistant Secretary is author-
ed to use all powers granted by section 701 of the Public Works and Economic Development Act of 1965, as amended.

§ 318.16 Use of other facilities.

The Assistant Secretary is authorized to delegate to the heads of other departments and agencies of the Federal Government any of the Assistant Secretary's functions, powers, and duties under this Act, as he may deem appropriate, in conformity with section 708 of the Public Works and Economic Development Act of 1965, as amended.

§ 318.17 Compliance with other Federal requirements.

Each applicant shall, as a condition to its receipt of a grant or loan under this part, comply with the following relevant Federal requirements:

(a) Those requirements concerning relocation and related payments to all persons displaced as a result of the development of a project in a drought impacted area with funds received under this part, as provided for in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 et seq., and 13 CFR Part 310.

(b) The provisions of OMB Circular A-95, with the following modifications. Copies of the application will be sent to the State and area-wide clearinghouses at the same time they are submitted to the funding agency. The applicant will also notify the clearinghouses that because of the time constraints any comments will have to be made almost immediately and addressed to the funding agency. If comments or objections from clearinghouses are not received prior to completion of application processing, they will not be considered.

(c) All environmental requirements, to the maximum extent possible as determined by the Assistant Secretary, including, but not limited to:

(1) The National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.) and requirements found in § 318.19;

(2) The Clean Air Act, as amended (42 U.S.C. 1857-1858a);

(3) The Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1376);

(4) The National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) and requirements found in § 318.19;

(5) The Wild and Scenic Rivers Act (16 U.S.C. 1271-1287);

(6) The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(7) The Safe Drinking Water Act (42 U.S.C. 300f-j9); and

(8) The Historical and Archeological Data Preservation Act, as amended (16 U.S.C. 469 et seq.).

(d) 13 CFR 309.27, entitled "Land use near Federal airfields."

(e) 13 CFR 309.14, entitled "Design, construction, and alteration of buildings to accommodate the physically handicapped."

(f) 13 CFR Part 314, entitled "property management standards," except 13 CFR 314.6(a), 13 CFR 314.6(b), and 13 CFR 314.50.

(g) The National Flood Insurance Program and EDA's requirements regarding flood hazards found at 13 CFR 309.15.

(h) 15 CFR Subtitle A, Part 8 "Civil Rights"; Title VI of the Civil Rights Act of 1964; 28 CFR Part 42, Subpart F to the extent set forth in EDA's policies and guidelines; and Executive Order 11246 "Equal Employment Opportunities."

(i) Other laws affecting this program.

§ 318.18 Acceptance of applications.

(a) Applications for assistance under this part shall only be submitted to the appropriate EDA Regional Office or other designated offices.

(b) Applications shall be on forms approved by the Assistant Secretary and accompanied by such exhibits as may be required.

(c) Applications shall be recorded and deemed received upon their arrival at the appropriate EDA Regional Office or other designated offices.

§ 318.19 Environmental considerations.

(a) *The National Environmental Policy Act.* (1) Section 105 of the Act requires the National Environmental Policy Act to be implemented to the fullest extent consistent with, but subject to, the time cons
by the Act. Accordingl
Secretary or his
making the final de
garding an applicatio
shall give considerati
mental consequence
within that period. E
able to prepare enviro
statements for those
may significantly affe
the human environme
the fullest extent pos
time period, EDA wil
ect's potential enviro
and give appropriate
environmental impac
final decisions.

(2) In order that E
its environmental ana
projects, applicants s
following materials w
tions:

(i) A description of
the proposed project
an impact on the e
nature of the enviro
be affected, and data
environmental impac

(ii) Alternatives
project;

(iii) Any environme
viously conducted by
Federal agencies; and

(iv) Evidence of p
the project, such as t
public hearings held

If the materials r
graphs (a)(2) (iii) an
tion are not availabl
include a certificatio
materials are not ava

(3) EDA will inde
and analyze enviro
tion submitted by ap

(i) Where appro
seek the views of
agencies which ha
law or special exper
any environmental i

(ii) If a project ap
controversial for e
sons and there is a
derstand the basis
EDA may request
cerned residents th
notification or a
meeting held near t

(4) EDA shall deny an application if, after consideration of the benefits of a project against any environmental costs, it concludes that the environmental costs exceed the benefits. EDA may deny any application solely on the basis that its environmental impact analysis discloses that unacceptable adverse impacts will or are likely to result. EDA, where necessary, may condition approval of a project upon the adoption of specified measures designed to mitigate any adverse environmental impacts.

(b) *The National Historic Preservation Act.* (1) Applicants shall include with their applications either a statement of their State Historic Preservation Officer's views of the proposed project or shall certify that their State Historic Preservation Officer was provided with a detailed project description and a request for comments prior to the submission of the application to EDA. Such description shall include a narrative of the elements of the project and its location; a map of the project site and surrounding area indicating the specific location of the project site in relation to adjacent streets and other identifiable objects; line drawings or sketches of the project; and, if the building demolition or renovation is involved, photographs of the affected properties.

(2) If necessary, EDA will attempt to complete the coordination of proposed projects with the Advisory Council on Historic Preservation. EDA will use the results of this coordination process, even though completion of this process may not be possible, as a factor in making a final decision on the project.

§ 318.20 Final determination.

(a) All applications for assistance under this part shall be processed by the appropriate EDA Regional Office.

(b) The Regional Director or his designee shall notify the applicant, in writing, when its application has been rejected and state the reasons therefore.

(c) The Assistant Secretary or his designee shall review all applications and make the final determination.

(d) The offer of a grant or a loan shall be made in writing and on such terms and conditions as the Assistant Secretary or his designee may determine.

§ 318.21 Suspension and termination.

(a) *Suspension or termination for cause.* EDA may initiate a suspension or termination of a project approved under this part for failure by the recipient of assistance to adhere to the requirements of the grant or loan. EDA shall promptly notify the recipient in writing of the suspension or termination, specifying the reasons for the action and its effective date. Payments made to the recipient or recoveries by EDA under grants or loans suspended or terminated for cause shall be in accord with the legal rights and liabilities of the parties.

(b) *Suspension or termination for convenience.* EDA or the recipient of assistance under this part may initiate a suspension or termination of a project approved under this part when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the conditions of the action, including the effective date, and in the case of partial suspension or termination, the portion to be suspended or terminated. The recipient shall not incur new obligations for the suspended or terminated portion, after the effective date, and shall cancel as many outstanding obligations as possible. EDA shall allow full credit to the Federal share of the noncancellable obligations, properly incurred by the grantee prior to suspension or termination.

§ 318.22 Records and audit.

(a) Each recipient of assistance under the Act shall keep such records as EDA shall prescribe, including records which fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit. Records shall be kept for a period of three (3) years after the date of the final expenditure report, except that:

(1) If audit findings have not been resolved, these records are to be retained beyond the three (3) year period;

(2) Records for nonexpendable property shall be retained for three (3) years after its final disposition;

(3) When grant records are transferred to or maintained by EDA, the three (3) year retention requirement is not applicable.

(b) The Assistant Secretary, the Comptroller General of the United States, or any of their duly authorized representatives shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance under the Act.

§ 318.23 Project implementation.

(a) *Timing.* Applicants may begin project implementation action at their own risk without prejudice to their applications. Projects must be completed by April 30, 1978, unless the Secretary approves a time extension due to exceptional circumstances.

(b) *Project manager.* Where appropriate, a project manager or director may be employed. The costs of that person's services are eligible project costs.

(c) *Disbursement.* Disbursements will be by Treasury check or letter or credit pursuant to established policies and procedures of EDA. Loans will not be disbursed until the loan has been closed.

(d) *Construction project implementation*—(1) *Bid procedures.* Construction on projects normally will be contracted for through competitive bidding. Negotiated contracts will be allowed if the Assistant Secretary determines it necessary in accordance with Attachment O of FMC 74-7. EDA will allow simultaneous design and construction of projects if the Assistant Secretary determines it necessary. Force account contruction is also acceptable.

(2) *Proposed construction contract documents* Where the Grantee intends to use its own contract documents, the contract documents must conform to the requirements of Attachment O, of FMC 74-7, and to local and State law.

(3) *Project construction monitoring.* Grantees will be expected to constantly monitor the performance of grant-supported projects to assure that time schedules are being met and other performance goals are being achieved.

(4) *EDA inspections.* EDA will perform random construction project inspections as circumstances dictate and may perform special audits in addition to the final audit.

(5) *Final inspection.* A final inspection will be scheduled by the Grantee when all construction has been completed, the Architect/Engineer has accomplished his final inspection, and all deficiencies have been corrected. The project must be complete and functional before the final inspection is performed.

§ 318.24 Loan monitoring, closing and disbursement.

Loans will be monitored, closed and disbursed in accordance with the policies and procedures set forth in EDA's guidelines and procedural papers for the Community Emergency Drought Relief Program.

§ 318.25 Grant servicing.

Grants will be serviced in accordance with the policies and procedures set forth in EDA's guidelines and procedural papers for the Community Emergency Drought Relief Program.

CHAPTER V—REGIONAL ACTION PLANNING COMMISSIONS

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PART 500—ECONOMIC DEVELOPMENT REGIONS

Sec.
500.1 Authority.
500.2 Purpose of designation.
500.3 Criteria for designation.
500.4 Documentation required for designation.

Authority: 42 U.S.C. 3181 et seq.; 42 U.S.C. 3211; Executive Order 11386, dated Dec. 28, 1967.

Source: 40 FR 48112, Oct. 14, 1975, unless otherwise noted.

§ 500.1 Authority.

(a) The Secretary of Commerce is authorized by section 501 (42 U.S.C. 3181) of the Public Works and Economic Development Act of 1965, as amended, (the Act) to designate multistate economic development regions, with the concurrence of the States in which such regions will be wholly or partially located, if he finds that the areas within such regions are related geographically, culturally, historically, and economically, and that the region has lagged behind the whole Nation in economic development.

(b) The Secretary of Commerce has appointed a Special Assistant for Regional Economic Coordination under authority of Executive Order 11386 to assist him in carrying out his responsibilities under the Act.

§ 500.2 Purpose of designation.

Economic development regions are designated in order to give the participating States, through the formulation of a common economic development program, the advantages of joint and coordinated action on economic problems extending beyond the boundaries of a single State. Designated regions also provide for more effective utilization of the various existing State and Federal programs to implement the regional overall economic development program.

§ 500.3 Criteria for designation.

In order to establish an economic development region under the Act, the Secretary of Commerce must find that:

(a) The areas within such region are related geographically, culturally, historically, and economically.

(b) With the exception of Alaska and Hawaii, the Commonwealth of Puerto Rico and the Virgin Islands and the States of California and Texas, the region is within contiguous States, and

(c) Upon consideration of the following matters, among others, the region has lagged behind the whole Nation in economic development:

(1) The rate of unemployment is substantially above the national rate.

(2) The median level of family income is significantly below the national median,

(3) The level of housing, health, and education facilities is substantially below the national level,

(4) The economy of the area has traditionally been dominated by only one or two industries which are in a state of long-term decline,

(5) The rate of outmigration of capital or labor or both is substantial,

(6) The area is adversely affected by changing industrial technology,

(7) The area is adversely affected by changes in national defense facilities or production, and

(8) Indices of regional production indicate a growth rate substantially below the national average.

[40 FR 48112, Oct. 14, 1975, as amended a 42 FR 22135, May 2, 1977]

§ 500.4 Documentation required for designation.

As a basis for designation the Secretary may ask from the respective Governors, a formal document requesting designation. This document should contain the following elements:

(a) Compilation of data and statistics about the region which demonstrate that the region meets the statutory criteria under section 501 of the Act,

(b) An outline and discussion of the major general and specific regionwide problems which need to be resolved on a regional basis,

(c) An analysis which demonstrates why a regionwide approach would be more effective in solving these prob

pages tig

lems than a State-by-State approach, and

(d) A list of regionwide programs that might appropriately be undertaken in an effort to overcome these problems.

PART 510—MODIFICATION OF REGIONAL BOUNDARIES

Sec.
510.1 Authority and purpose.
510.2 Documentation required for modification.

AUTHORITY: 42 U.S.C. 3181 et seq.; 42 U.S.C. 3211; Executive Order 11386, dated Dec. 28, 1967.

§ 510.1 Authority and purpose.

Section 503(a)(1) of the Act (42 U.S.C. 3183(a)(1)) directs each regional action planning commission established pursuant to the Act to "advise and assist the Secretary in the identification of the optimum boundaries for multistate economic development regions." The purpose of this part is to set forth the principles and procedures by which the Secretary will consider and act upon proposed boundary adjustments.

[40 FR 48113, Oct. 14, 1975]

§ 510.2 Documentation required for modification.

The Secretary may modify regional boundaries upon the written concurrence of the Governor of the State or States whose territory would be affected by the expansion of the region; a unanimous recommendation by the Governors in the Commission; and a review of documentation justifying the modification including:

(a) A statistical analysis of the expanded territory in terms of the criteria in § 500.3 of this part;

(b) Where appropriate, additional statistics and analyses evidencing inadequate or retarded economic development;

(c) A statistical profile of the expanded territory in terms of population, employment and income;

(d) Information concerning the economic, cultural, historic, or geographic relationship with the areas already situated within the designated economic development region;

(e) A description of the specific economic development problems which are common to the designated region and to the proposed additional territory, and for which action by the regional commission is needed;

(f) A comparison of the economic ties of the additional territory to the designated region as opposed to its economic ties to areas outside the designated region.

[40 FR 48113, Oct. 14, 1975]

PART 520—REGIONAL COMMISSIONS

Sec.
520.1 Establishment.
520.2 Membership.
520.3 Initial meeting.
520.4 Voting.
520.5 Program development criteria.
520.6 Reports.
520.7 Powers and duties generally.
520.8 Headquarters.
520.9 Hearings.
520.10 Records.

AUTHORITY: 42 U.S.C. 3181 et seq.; 42 U.S.C. 3211; Executive Order 11386, dated Dec. 28, 1967.

SOURCE: 40 FR 48113, Oct. 14, 1975, unless otherwise noted.

§ 520.1 Establishment.

(a) The Secretary, in accordance with section 502 of the Act (42 U.S.C. 3182), shall invite and encourage the States wholly or partially located in a designated economic development region to establish a multistate regional commission.

(b) If the Secretary finds that the State of Alaska or the State of Hawaii or the State of California or the State of Texas meets the requirements for an economic development region, he may at the request of the Governor of the affected State establish a Commission for such State.

[40 FR 48113, Oct. 14, 1975, as amended at 42 FR 22135, May 2, 1977]

§ 520.2 Membership.

(a) Membership on a regional commission consists of one Federal member, hereinafter referred to as the

htly bound

"Federal Cochairman," and one member from each State participating in the region.

(b) The Federal Cochairman is appointed by the President, by and with the advice and consent of the Senate, and may have an alternate who is similarly appointed. The State member shall be the Governor. Each State member may have a single alternate, appointed by the Governor from among the members of the Governor's cabinet or the Governor's personal staff.

[40 FR 48113, Oct. 14, 1975, as amended at 42 FR 22135, May 2, 1977]

§ 520.3 Initial meeting.

The Federal Cochairman, after appointment by the President and confirmation by the Senate, is authorized to call the initial organizational meeting of the regional commission, at which time, among other things, the State members of the commission shall elect a State Cochairman from among their number for a term of not less than one year, and the commission may declare its establishment, adopt a charter listing its functions, and adopt resolutions governing the internal administration of the commission.

[42 FR 22135, May 12, 1977]

§ 520.4 Voting.

(a) Decisions by a regional commission require the affirmative vote of the Federal Cochairman and a majority, or at least one if only one of two, of the State members.

(b) No decision involving commission policy, approval of regional development plans, implementing investment programs or allocating funds among the States may be made without a quorum of State members present.

(c) A State alternate shall not be counted toward the establishment of a quorum of the commission in any instance in which a quorum of the State members is required to be present. No commission power or responsibility specified in paragraph (b) of this section, nor the vote of any commission member, may be delegated to any person not a commission member or who is not entitled to vote in commission meetings.

(d) A State's single designated alternate may vote in the absence of the Governor at a meeting at which a quorum of Governors is required, but the alternate does not count toward establishing a quorum.

(e) An alternate shall vote in the event of the absence, death, disability, removal, or resignation of the State member or Federal Cochairman for which he is an alternate.

(f) The Federal Cochairman shall not vote in the election of a State Cochairman or on the determination of the share of administrative expenses to be contributed by each State.

[42 FR 22135, May 12, 1977]

§ 520.5 Program development criteria.

(a) The Secretary, in accordance with the provisions of section 504 of the Act (42 U.S.C. 3184), through the Federal Cochairman, shall encourage each regional commission in its development of recommendations for programs and projects for future regional economic development, and in the establishment of priority ranking for such programs and projects, to follow procedures that will insure consideration of the following factors:

(1) The relationship of the project or class of projects to overall regional development including its location in an area determined by the State to have a significant potential for growth;

(2) The population and area to be served by the project or class of projects including the relative per capita income and unemployment rates in the area;

(3) The relative financial resources available to the State or political subdivision or instrumentalities thereof which seek to undertake the projects.

(4) The importance of the project or class of projects in relation to other projects or classes of projects which may be in competition for the same funds;

(5) The prospects that the project, on a continuing rather than a temporary basis, will improve the opportunities for employment, the average level of income, or the economic and social

development of the area served by the projects.

(b) The Secretary or his Special Assistant for Regional Economic Coordination may from time to time issue guidelines to assist the Federal Cochairmen in carrying out their responsibilities under this section.

§ 520.6 Reports.

In accordance with section 510 of the Act (42 U.S.C. 3189) each regional commission must make a comprehensive and detailed annual report each fiscal year to the Congress with respect to the commission's activities and recommendations for programs. Such reports shall be submitted to the Secretary for review prior to transmitting them to the Congress. Annual reports shall be printed and transmitted to the Congress no later than seven months after the last day of the fiscal year for which the report is made.

§ 520.7 Powers and duties generally.

Each regional commission is authorized by section 506(a) of the Act (42 U.S.C. 3186(a)) to:

(a) Adopt, amend, and repeal bylaws, rules, and regulations governing the conduct of its business and the performance of its functions;

(b) Appoint and fix the compensation of an executive director and such other personnel as may be necessary to enable the commission to carry out its functions, except that such compensation shall not exceed the salary of the alternate to the Federal Cochairman on the commission and no member, alternate, officer, or employee of such commission, other than the Federal Cochairman on the commission and his staff and his alternate, and Federal employees detailed to the commission under paragraph (c) of this section, shall be deemed a Federal employee for any purpose;

(c) Request the head of any Federal department or agency (who is also authorized by section 506(a)(3) of the Act) to detail to temporary duty which the commission such personnel within his administrative jurisdiction as the commission may need for carrying out its functions, each such detail to be without loss of seniority, pay, or other employee status;

(d) Arrange for the services of personnel from any State or local government or any subdivision or agency thereof, or any intergovernmental agency;

(e) Make arrangements, including contracts, with any participating State government for inclusion in a suitable retirement and employee benefit system of such of its personnel as may not be eligible for, or continue in, another governmental retirement or employee benefit system, or otherwise provide for such coverage of its personnel, and the Civil Service Commission of the United States is authorized to contract with such commission for continued coverage of commission employees, who at date of commission employment are Federal employees, in the retirement program and other employee benefit programs of the Federal Government;

(f) Accept, use, and dispose of gifts or donations of services or property, real, personal, or mixed, tangible or intangible;

(g) Enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in carrying out its functions and on such terms as it may deem appropriate, with any department, agency, or instrumentality of the United States or with any State, or any political subdivision, agency, or instrumentality thereof, or with any person, firm, association, or corporation;

(h) Maintain an office in the District of Columbia and establish field offices at such other places as it may deem appropriate; and

(i) Take such other actions and incur such other expenses as may be necessary or appropriate.

§ 520.8 Headquarters.

Pursuant to section 506(b) of the Act (42 U.S.C. 3186(b)), the Federal Cochairman maintains his headquarters office in the District of Columbia.

§ 520.9 Hearings.

In accordance with section 507 of the Act (42 U.S.C. 3187), each regional commission may:

(a) Hold such hearings, sit and act at such times and places, take such testimony, receive such evidence, and print or otherwise reproduce and distribute so much of its proceedings and reports thereon as it may deem advisable; a Cochairman of such commission, or any member designated by the commission for the purpose, is authorized by the Act to administer oaths when it is determined by the commission that testimony shall be taken or evidence received by oath, and

(b) Arrange for the head of any Federal, State or local department or agency who is authorized by the Act, and to the extent not otherwise prohibited by law, to furnish to the commission such information as may be available to or procurable by such department or agency.

§ 520.10 Records.

The Act requires each regional commission to keep complete records of its transactions, which shall be made available for public inspection.

PART 530—REVIEW OF COMMISSION PLANS

Sec.
530.1 Authority and purpose.
530.2 Comprehensive planning.
530.3 Review standards.

AUTHORITY: 42 U.S.C. 3181 et seq.; 42 U.S.C. 3211; Executive Order 11386, dated Dec. 28, 1967.

SOURCE: 40 FR 48114, Oct. 14, 1975, unless otherwise noted.

§ 530.1 Authority and purpose.

Section 503(a)(2) of the Act (42 U.S.C. 3183(a)(2)) requires each regional commission to develop a comprehensive long-range economic plan to be approved by the Secretary. Section 503(b) (42 U.S.C. 3183(b)) requires the Secretary to "present such plans and proposals of the commissions as may be transmitted and recommended to him (but are not authorized by any other section of the Act) first for review by the Federal agencies primarily interested in such plans and proposals and then, together with the recommendations of such agencies, to the President for such action as he may deem desirable." The Secretary, in cooperation with the Federal Cochairmen, will determine appropriate procedures for obtaining review of commission plans by interested departments and agencies.

§ 530.2 Comprehensive planning.

Commission plans normally shoul be supported by regional program which have been endorsed by the commissions; when fully developed thes plans will ordinarily include the following elements:

(a) *Review of prior studies.* The regional plan should include a review o prior studies concerning the region economy.

(b) *Framework for analysis.* The regional plan should include an estimat of the gaps in research and dat needed to conduct effective development.

(c) *Review of the regional econom* The regional plan should include pr jections of population and labor for and employment by key industrial se tors, and an inventory of natural sources. It should analyze the prese capability of the infrastructure to su port economic growth. It should ide tify the major growth centers with the region which are capable of lo term economic growth.

(d) *Review of conditions inhibit growth.* The regional plan should clude a review of the major fact which have caused the region to behind the Nation as a whole in e nomic development.

(e) *Review of major plans and pe ing decisions.* The regional p should review public and available vate plans for capital expansion investment, and should relate th other public and private plans to commission's regional plan.

(f) *Establishment of regional go* The regional plan should include explicit statement of the region's nomic goals, such as reducing un ployment, raising personal inco raising educational levels, and forth.

(g) *Determination of a develop strategy.* The regional plan shoul forth an explicit strategy for achie the region's specified develop goals. This strategy should includ analysis of the extent to which p investment should be concentrat dispersed, and what kinds of public investments are the most critical for achieving a higher rate of economic growth.

(h) *Review of existing program adequacy.* The regional plan should include a review and analysis of the extent to which existing Federal, State, and local programs are adequate to support the commission's goals and strategies. It should identify the major gaps, modifications, or supplements to existing programs which will help carry out the commission's development strategy.

(i) *Criteria for project identification.* The regional plan should include an analysis of the classes of projects which are consistent with the commission's goals and programs and an identification on a regionwide basis of the locations and types of projects necessary to carry out the regional plan for economic development.

(j) *Consideration of other planning in the region.* In developing plans and carrying out other activities under section 503(a) (2) and (7) of the Act (42 U.S.C. 3183(a) (2) and (7)), due consideration shall be given to the planning and activities of other Federal, State, local and sub-State planning agencies (including economic development districts) in the region.

§ 530.3 Review standards.

In reviewing the commission's regional plans prior to making recommendations to the President, the Secretary will consider the following factors:

(a) *Consistency with national economic trends.* The projections of economic activity contained in the plans will be compared with trends in the national economy. Such projections of regional growth should be reasonably consistent with the projections of national growth and other projections of regional growth, particularly when the regional projections depend for their success upon growing regional exports to national markets.

(b) *Interregional consistency.* Regional plans developed by the commissions will be assessed to determine their reasonable consistency with each other, taking into account the differing needs and objectives of the various regions.

(c) *Transference of employment.* The regional plans will be assessed to assure that they do not provide for nor encourage industry or business to relocate in a region if such relocation will result in a transfer of jobs causing unemployment at the original location of the industry or business.

(d) *National benefits.* The regional plans should attempt to provide reasonable assurance that economic growth within the region can be sustained, and that the identifiable benefits from the proposed regional program justify the estimated Federal investment.

PART 540—ADMINISTRATION

Sec.
540.001 Authority and purpose.

Subpart A—Funding of Commissions

540.101 Purpose.
540.102 Funding procedures.

Subpart B—Administrative Standards Applicable to Commissions

540.201 Purpose.
540.202 Effective date.
540.203 Internal operations code.
540.204 Commission responsibilities.
540.205 Financial assistance—General.
540.206 Administrative requirements for recipients.
540.207 Personnel.
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Subpart C—Nondiscrimination

540.301 Title VI, Civil Rights Act of 1964.
540.302 Other statutes.

Subpart D—Compliance

540.401 Purpose.
540.402 Evaluation.
540.403 Audits.
540.404 Remedies for noncompliance.

AUTHORITY: 42 U.S.C. 3204; 42 U.S.C. 3211; 42 U.S.C. 3181 et seq.; Executive Order 11386; Department Organization Order 10-11, as amended.

SOURCE: 45 FR 61598, Sept. 17, 1980, unless otherwise noted.

§ 540.001 Authority and purpose.

(a) The Secretary of Commerce is directed by the Congress to administer Title V of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3181 *et seq.* (hereinafter the "Act"), which establishes the Regional Action Planning Commission program. In this role, the Secretary is authorized to establish such rules and regulations as may be necessary under 42 U.S.C. 3211.

(b) The standards contained in this part respond to the Secretary's legal duty to insure that the Federal funds provided to the Regional Commissions for their programs and internal operations are used for purposes authorized law. The standards of this part apply to all Regional Commissions established pursuant to Title V of the Act. They are designed to assure Commissions' accountability for the Federal funds which they receive, to improve efficiency and prevent fraud, waste and abuse, and to standardize certain procedures for all Commissions while allowing them to set additional standards and to develop their own standards in most areas of operation.

(c) The membership of a Regional Commission includes the Governors of the States in a designated economic development region and a Federal Cochairman appointed by the President. Each Commission is served by a non-Federal staff, and these regulations apply to the activities carried out by the Commission and its non-Federal staff. Each Federal Cochairman and his Federal staff remain subject to the standards applicable to Federal employees and Federal agencies and establishments, except where provisions in this part specifically apply to their activities.

Subpart A —Funding of Commissions

§ 540.101 Purpose.

This subpart describes the procedures which govern how Regional Commissions receive their funding from the Department of Commerce.

§ 540.102 Funding procedures.

(a) The annual budget request for the regional development program is
submitted to the Office of Mana
ment and Budget as a part of the
partment of Commerce's propo
budget and, as it is approved, becor
a part of the President's budget
quest submitted to the Congress. T
Federal Cochairmen shall prepare
submit to the Secretary any docum
tation and information on the Regi
al Commissions which the Departm
needs in order to formulate a bud
request for presentation before bud
authorities. The Federal Cochairn
also shall carry out other duties in
presentation of a budget request
may be required of them under law

(b) Funds for Commission o
ations and programs which are ap
priated to the Department of C
merce shall be treated as provided
the appropriation act, the authori
statute and other applicable statu
regulations and policies. Departm
of Commerce appropriated funds s
be transferred to Commissions in
cordance with the program's autho
ing statute and other applicable
eral laws and policies. As a condi
of receiving any funds from the Se
tary the Federal Cochairmen and
Regional Commissions shall subm
the Secretary such documents,
ports, financial plans and other in
mation in the form and at such ti
as the Secretary may require to c
out the Secretary's responsibil
under applicable law.

(c) Funds may be used by a Com
sion only for purposes authorized
law and in accordance with a finan
plan approved by the Secretary.
principles and standards of Offic
Management and Budget Circula
122 shall be used in determining
reasonableness, allowability and
cability of specific items of cost
curred directly by a Commis
Other requirements in the Act, in
part and in internal Commission
cies may restrict the allowabilit
certain items of cost even if allow
under A-122; these specific req
ments take precedence over Cir
A-122. Since the standards conta
in Circular A-122 will be used in
ing how a Commission uses its ad
istrative funds, each Commission
adhere to the policies stated in A
when developing internal policies

approving the direct expenditure of funds.

(d) For items of cost which are allowable under OMB Circular A-122 only with the approval of the grantor agency, the Federal Cochairman of the appropriate Commission is authorized to exercise this authority. All prior approvals of specific items of cost shall be in writing.

Subpart B—Administrative Standards Applicable to Commissions

§ 540.201 Purpose.

This subpart sets certain minimum standards to be followed by the Regional Commissions in their internal operations and in administering their assistance programs. While each Commission may adopt additional criteria, the criteria specified in this subpart represent the minimum acceptable criteria to be included in a Commission's code which will assure accountability for the Federal funds provided to the Commission.

§ 540.202 Effective date.

(a) This subpart shall become effective on January 1, 1980.

(b) Any grant or contract which is initially awarded on or after January 1, 1980, shall be subject to and meet the requirements of this subpart.

(c) Any grant or contract awarded before January 1, 1980, but renewed, extended, or amended on or after January 1, 1980, becomes subject to the requirements of this subpart on October 1, 1980, except that any grant or contract so amended, extended, or renewed on or after January 1, 1980, to provide increased funding becomes subject to the requirements of this subpart at the time the agreement is amended to reflect the new funding.

(d) All grants and contracts awarded, extended, amended, or renewed on or after October 1, 1980, are subject to the requirements of this subpart.

§ 540.203 Internal operations code.

(a) Each Commission shall adopt an internal operations code governing internal policies and procedures, which, at a minimum, must meet the requirements of this part. Hereinafter, this internal operations code is referred to as "Commission code."

(b) Prior to implementing an internal operations code, each Commission shall submit to the Department of Commerce for approval those portions of its operations code which affect and/or relate to the requirements contained in this subpart. The Secretary shall approve the submitted portions of an operations code if there is a finding that they meet the minimum criteria of this subpart. The Secretary will not act on those portions of an operations code which do not affect the criteria in this subpart. After the Secretary's approval, an operations code implemented by a Commission which continues to meet the minimum criteria of this subpart will be used in lieu of this subpart for the purpose of Departmental audits and evaluations of compliance with the rules in this subpart (see Subpart D of this part).

(c) Any proposed amendment to an approved operations code which affects any portion of the code which has been approved by the Secretary shall be submitted to and approved by the Secretary prior to its becoming effective. The Secretary shall approve the proposed amendment if it is authorized by law and meets the minimum criteria in this subpart. If the Secretary determines that the amendment does not affect the minimum criteria of this subpart, the Secretary shall take no action on it and the Commission is free to adopt or reject the amendment.

(d) If the Secretary takes no action on a proposed operations code or a proposed amendment within 45 calendar days of receiving it from a Commission, the code or amendment shall be deemed approved by the Secretary.

(e) The Department shall treat noncompliance by a Commission with any provision of its approved operations code as a violation of the corresponding rules in this part and shall take action as provided in Subpart D of this part.

(f) If a Commission's code has not been approved by the Secretary in accordance with this subpart, or if a Commission ceases to use its approved operations code, the Commission shall comply with the requirements contained in the minimum criteria in this subpart and this subpart shall be used for the purpose of Departmental evaluations and audits as described in Subpart D of this part.

§ 540.204 Commission responsibilities.

(a) Each Commission internal operations code shall contain standards as described in the remaining subsections of this section.

(b) Each code shall contain standards of conduct which shall govern the performance of Commission officers, employees or agents.

Minimum Criteria

(1) The standards shall provide for disciplinary actions to be applied for violations of the standards by officers, employees or agents.

(2) The standards shall contain the following minimum standards:

(i) *Personal financial interests.* (A) Except as provided in paragraphs (i)(B) of this section, no State Member, Alternate, person acting as an Alternate, officer, employee or agent of a Commission shall participate personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in any proceeding, application, award, selection, determination, grant, contract, procurement, claim, or any other activity in which, to his knowledge, at least one of the following has a financial interest that might cause a conflict of interest or create the appearance of a conflict of interest:

(*1*) The person himself or herself;

(*2*) His or her spouse;

(*3*) His or her minor child;

(*4*) His or her business partner;

(*5*) Any organization (other than a State or political subdivision of the State) which employs any person listed in paragraph (i)(A) (*1*), (*2*), (*3*), or (*4*) of this section;

(*6*) Any organization (other than a State or political subdivision of the State) in which the person is serving as officer, director, trustee, partner or employee;

(*7*) Any person with whom he or she is serving as officer, director, trustee, partner or employee in any organization;

(*8*) Any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment.

(B) Exceptions to paragraph (i)(A) of this section may be obtained if the State Member, Alternate, person acting as an Alternate, officer, employee or agent—

(*1*) First advises the Commission of the nature and circumstances of the activity;

(*2*) Makes full disclosure of the financi
terest in writing; and

(*3*) Receives in advance a written deterr
tion made by the Commission that th
terest is not so substantial as to be de
likely to affect the integrity of the
ices which the Commission expects
the individual involved.

The Commission shall keep a copy of
determination made under this rule i
official files.

(C) A Commission may declare void
rescind any contract or other agreeme
relation to which it finds that parag
(i)(A) of this section has been violated
Commission chooses not to void and re
a contract or agreement under these cir
stances, it shall place in its files a wr
report which states the following:

(*1*) The factual situation surrounding
contract or agreement;

(*2*) The personal financial interest invo
and

(*3*) The reasons for not voiding the con
or agreement.

(D) Because they remain subject to F
al criminal statutes, paragraphs (i) (A
(B) of this section do not apply to—

(*1*) The Federal Cochairman and hi
Federal staff;

(*2*) Any Federal officer or employee de
to a Commission pursuant to 42 U
3186(a)(3).

(ii) *Gifts, entertainment.* (A) Except a
vided in paragraph (ii)(B) of this se
no Commission employee or officer
accept or solicit, directly or indirectly
gift, gratuity, entertainment, loan o
other thing of monetary value, fr
person who—

(*1*) Has or seeks contracts or grant rel
or other business or financial rel
with the Commission; or

(*2*) Has interests that may be substan
affected by the performance or no
formance of the employee's or off
offical duty.

(B) Nothing in paragraph (ii)(A) o
section shall prohibit—

(*1*) The solicitation or acceptance o
gift, gratuity, favor, loan, entertai
or any other thing of value which
out of obvious family or personal rel
ships, such as those between the pa
children or spouse of the employe
the employee, so long as it is clear
the circumstances that it is the fam
personal relationship rather tha
business of the person concerned t
the motivating factor;

(*2*) The acceptance of food and re
ments of nominal value on infreque
casions in the ordinary course of a l
eon or dinner meeting or other meet
on an inspection tour where an em
may properly be in attendance;

(3) The acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans; and

(4) The acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, or calendars, and other items of nominal value.

(c) Each code shall contain a pay schedule for employees and a schedule of identified employee benefits with corresponding policies on benefits.

Minimum Criteria

(1) Benefits include, but are not limited to, annual and sick leve, other leave, health insurance, life insurance and retirement benefits.

(2) In establishing benefits, a Commission may do one of the following:

(i) Contract for its own benefit package;

(ii) Adopt a benefits system comparable to that of the Federal Government; or,

(iii) If Commission employees are treated the same as regular State employees for benefit purposes, contract with a State Government in the region for inclusion of its employees in the State's retirement and employee benefit system. Regardless of the benefit system established, the per employee cost to the Commission of providing benefits to its employees shall not exceed the higher of the per employee cost to the Federal Government of providing benefits to Federal Government employees or the per employee cost to any State Government in the region of providing benefits to State employees. This ceiling on cost to the Commission will be determined by computing the costs to the Federal Govenment and to the State Government of the benefits which they provide to their respective employees and expressing those costs as percentages of the compensation provided to their employees; the higher of the two percentages shall be the ceiling which a Commission cannot exceed in paying for benefits to its employees.

(3) A Commission shall not establish policies on annual, sick and other leave which shall have the effect of giving higher benefits to Commission employees than Federal employees receive or a State Government in the region provides to its employees.

(4) The pay schedule, benefits and related policies must meet the applicable requirements of OMB Circular A-122 and shall not exceed limitations in the Act.

(5) The Federal share of the compensation for Commission administrative employee positions shall not exceed one-half of the rate paid by the Federal Government to persons occupying similar positions with similar responsibilities, except that the ceiling shall be 100% of the Federal rate for positions paid with 100% Federal funds. (See § 540.207(d) of this part.)

(d) Each code shall contain procedures, policies and allowable dollar amounts governing the authorization for and reimbursement of travel and transportation costs for employees in transacting official Commission business.

Minimum Criteria

(1) Travel costs include transportation, food, lodging and related costs incurred by Commission personnel in performance of their official duties away from their regular place of duty.

(2) The amount of any reimbursement for travel or transportation costs shall not exceed the amount of reimbursement allowed by the standard travel regulations of the Federal Government.

(3) Travel and transportation procedures and policies shall generally conform to the Department of Commerce standard travel regulations contained in Department Administrative Order 204-1 and the implementing Handbook.

(4) The standards of paragraphs (1), (2) and (3) of this subsection shall not apply if a Commission adopts the standard travel regulations of a State Government in the region and if a Commission employee is treated the same as a regular State employee would be for purposes of travel and transportation authorization and reimbursement.

(e) Each code shall contain payroll and attendance policies and procedures.

Minimum Criteria

(1) A timekeeper's manual shall be established by the Commission.

(2) A Commission shall keep time and attendance records on all persons employed by it in order to insure the proper recording of attendance, leave, other absences from duty and the proper distribution of hours by project.

(3) Each payroll period, only an authorized Commission supervisor or official shall verify, approve and sign the time and attendance records.

(f) Each code shall contain procedures for establishing and updating experience and education requirements for each authorized Commission employee position.

Minimum Criteria

The requirements must be reasonable, explicit, and verifiable.

(g) Each code shall contain specific policies governing the conduct and responsibilities of officers and employees and the use of Commission funds in the following areas, except to the extent covered by paragraph (b) of this section:

(1) Gifts;
(2) Entertainment;
(3) Honoraria;
(4) Training;
(5) Use of Commission time and facilities;
(6) Outside employment;
(7) Use and disclosure of employment and information;
(8) Political activities;
(9) Non-discrimination;
(10) Nepotism;
(11) Lobbying;
(12) Authorization for and expenses of conferences and meetings.

Minimum Criteria

(1) The specific policies must meet the applicable requirements of Circular A-122, except where a Commission adopts the specific policies of a state in its region to govern the twelve listed categories and the State's policies conflict with Circular A-122.

(2) The Commission code must establish a procedure by which all employees are notified of the responsibilities and rights created by this subsection.

(3) The non-discrimination policies of the Commission shall meet the applicable Federal requirements imposed on the Commissions in the areas of discrimination by race, color, national origin, sex, handicap and age. (See Subpart C of this part.)

(4) The political activities policies shall meet the applicable requirements of the Hatch Political Activity Act, 5 U.S.C. 1501 *et seq.*

(5) Policies on the use and disclosure of employment and information, at a minimum, shall address the areas of private gain, non-public information and coercion.

(6) The nepotism policy, at a minimum, shall cover those relatives identified in 5 U.S.C. 3110, the Federal nepotism statute.

(h) Each code shall contain requirements for obtaining, reviewing, and acting upon employee statements of employment and financial interests.

Minimum Criteria

(1) Each Commission code shall require statements of employment and financial in-
terests from the Executive Di
those employees deemed by the C
to exercise substantial responsibi
nection with the handling of fu
award and administration of gran
tracts, such that judgment could
by outside employment or fina
ests.

(2) Statements shall be update

(3) At least the Federal Cocha
review the statements of emplo
financial interests and assure th
ate action is taken on the infor
tained therein in order to reso
or apparent conflicts of interest.

(4) Statements shall be held i
except for good cause and in
with applicable privacy laws.

(5) Facts disclosed in statemen
dicate a conflict or apparent
tween the personal interest of a
and the interest of the Commis
investigated and referred to leg
appropriate.

(6) The standards shall co
dures and sanctions for deali
ployees with unresolved confli
est.

(i) Each code shall contai
priate appeal procedure fo
covering:

(1) Cases of discrimination
preferential treatment;
(2) Adverse personnel act
verse nonactions;
(3) Violation of official an
conduct standards.

Minimum Criteria

The procedure shall provide
and the opportunity for a hear
ance with applicable law.

(j) Each code shall co
dures governing audit res
project closeout for gran
tracts awarded by the Com

Minimum Criteri

These standards shall inc
graph 8 of OMB Circular A-7
rate, but expand upon, Att
OMB Circular A-110 and A
and P of Circular A-102.

(k) Each code shall co
and procedures on cash
order to ensure that pay
cipients do not exceed
quirements.

Minimum Criteria

Section 8 of Department of Commerce Administrative Order 203-7 on cash management shall be used as a guide for determining the subjects which must be addressed by these policies and procedures.

§ 540.205 Financial assistance—General.

Each Commission code shall meet the minimum criteria of this section.

(a) *Selection of Instrument.* Before a Commission enters into an agreement which involves the transfers of funds or other assistance to a recipient, the Executive Director shall decide whether to use a grant or a contract according to the following standards:

(1) *Administrative Contracting.* Procurement of supplies, services and other property with administrative expense funds for the direct benefit and use of the Commission shall be accomplished with a contract or purchase order in accordance with § 540.211 of this subpart.

(2) *For-Profit Organizations.* Agreements of any type, using program funds, with an individual or a for-profit firm, partnership, corporation, or other for-profit organization shall be accomplished with a contract in accordance with § 540.211 of this subpart.

(3) *Non-Profit Organizations and Government Agencies.* All agreements, using program funds, with colleges, universities, hospitals and other non-profit organizations and with agencies of State or local government, shall be accomplished with a grant instrument in conformity with §§ 540.205 and 540.206 of this subpart. However, a Commission may contract with the program funds for a plan, study, investigation or similar software project or the acquisition of data, when the contract is for the use and benefit of a third party who is not the contractor. This contracting will be accomplished in accordance with § 540.211 of this subpart. However, when the scope of work or the final work product is for the use and benefit of the contractor, the Commission may not use a contract but must use a grant and comply with §§ 540.205 and 540.206.

(b) *Purpose.* (1) A grant or contract may be awarded by a Commission only for a purpose or purposes authorized by Title V of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3181 *et seq.*

(2) No grant or programmatic (i.e., non-procurement) contract shall be awarded unless there is an approved application from the proposed recipient which discloses how the funds will be used. Each such grant or contract shall—

(i) Contain a description of the work to be accomplished under the grant or contract (the "scope of work") which identifies final work products and the specific activities supported by the financial assistance;

(ii) Identify the goals and objectives of the assistance and how Commission funding will assist in meeting those objectives; and

(iii) Be supported by approved plans, budgets and other information submitted by the applicant/recipient to enable the Commission to evaluate the relationship of funding to goals and to perform technical evaluations and cost/price analyses as may be required.

(c) *Changes.* (1) Changes in the scope of work, the funding or any other provision or condition of a grant or contract shall be made only by formal written amendment of the agreement signed by both parties.

(2) Changes in funding for a project shall be documented in the official project file to justify the increase or decrease and shall describe the effect on the scope of work. Changes in a project scope of work shall be documented in the official project file to justify the effect or non-effect on the level of funding.

(3) If a Commission determines that there are valid reasons to approve a cost overrun involving a non-profit entity, it shall place a written justificatioin in the project file prior to approval of the increased funding. Cost overruns involving for-profit entities are not allowable except in accordance with applicable cost principles.

(4) Project files must be kept up-to-date with all changes.

(d) *Prohibitions.* (1) Program funds provided to a Commission by the Federal Government pursuant to Title V of the Act shall not be used by a Commission for the procurement of supplies, services or other property for the direct administrative benefit and use of the Commission.

(2) No grant or contract shall be entered into by a Commission for the purpose of funding an individual's salaried position in a unit of government or for paying the salary of any individual except as follows: All or any part of the compensation (and allowable benefits) of an individual may be a cost charged to grant or contract funds as an expense of carrying out specific duties detailed in the scope of work for the grant or contract. The amount of cost charged will depend upon the services rendered and the extent of benefits received in relation to grant or contract objectives and in accordance with the applicable cost principles. No grant or contract funds shall be used to pay any portion of the compensation of a Governor or an Alternate or any person who acts as an Alternate.

(3) In accordance with applicable cost principles, a grant or contract with a unit of State or local government shall not provide for payments to cover expenses for general administrative activities of an ongoing nature which the unit normally incurs to carry out its general governmental responsibilities and which the unit would have carried out even if Commission assistance were not available. Such assistance will be considered an unauthorized subsidy.

(e) *Monitoring and Evaluation*—(1) *Monitoring.* During the course of each project assisted, the Commission shall assess the progress of the project to (i) ensure that time schedules are being met, (ii) projected work objectives are being accomplished, and (iii) other performance goals are being achieved. Monitoring activities shall be documented in the project file.

(2) *Evaluation.* At the completion of each project assisted, the Commission shall (i) assess the results of the project in relation to its established, approved objectives; (ii) measure the overall results of program accomplishments in terms of contributions to the Commission's basic goals and objectives; and (iii) assure that evaluation activities are fully documented in the project file.

(3) A Commission shall not dele
the following to any person who i
an official or employee of the Com
sion:

(i) Accountability for insuring
grants and contracts are being pr
ly monitored and that correctiv
tions are taken when approp
(even when the Commission ma
supplemental grant).

(ii) Final evaluation and appro
performance and costs under g
and contracts. (When projects
funded under section 509 of the
final approval of costs will be
mined by the Federal agency adr
tering the grant.)

**§ 540.206 Administrative requiremen
recipients.**

Each Commission code shall
the criteria of this section.

(a) Each Commission shall ado
following standards governing
ents of financial assistance:

(1) For grants to State and
Governments, the following a
ments in Office of Managemer
Budget (OMB) Circular A-1
amended—

(i) A—Cash Depositories;

(ii) B—Bonding and Insurance

(iii) C—Retention and Custod
quirements for Records;

(iv) E—Program Income;

(v) F—Matching Share;

(vi) G—Standards for Gran
nancial Management Systems;

(vii) H—Financial Reportin
quirements;

(viii) I—Monitoring and Re
Program Performance;

(ix) K—Budget Revision Proc

(x) L—Grant Close-out Proce

(xi) N—Property Mana
Standards;

(xii) O—Procurement Sta
and

(xiii) P—Audit Requirements.

(2) For grants to institut
higher education, hospitals, an
nonprofit organizations, the f
attachments in OMB Circular

(i) A—Cash Depositories;

(ii) B—Bonding and Insuranc

(iii) C—Retention and Custo
quirements for Records;

(iv) D—Program Income;

(v) E—Cost Sharing and Matching;

(vi) F—Standards for Financial Management Systems;

(vii) G—Financial Reporting Requirements;

(viii) H—Monitoring and Reporting Program Performance;

(ix) J—Revisiion of Financial Plans;

(x) K—Close-out Procedures;

(xi) L—Suspension and Termination Procedures;

(xii) N—Property Management Standards; and

(xiii) O—Procurement Standards.

(b) The Federal Cochairman shall secure the prior written approval of the Director of the Office of Management and Budget (OMB), with a copy to the Secretary, before granting exceptions to the requirements of the attachments listed in paragraph (a) of this section.

(c)(1) If a Commission wishes to adopt a financial reporting form which is inconsistent with Attachment H of OMB Circular A-102 or Attachment G of OMB Circular A-110, the Federal Cochairman shall secure the written approval of the Director of OMB, (copy to the Secretary) before the form is put into use.

(2) Each Commission is free to negotiate indirect costs with each individual grantee, so long as any Commission-approved indirect cost rate or lump-sum payment for indirect costs does not exceed the Federally approved indirect cost rate negotiated with the recipient and the Commission does not establish policies or requirements which in effect set across-the-board ceilings for the reimbursements of indirect costs for Commission grantees.

(d) *Cost principles and standards*—(1) *State and local governments.* When a Commission enters into a grant or contract with a State or local government, it shall apply the principles and standards of Federal Management Circular (FMC) 74-4 for determining reasonableness, allowability and allocability of costs.

(2) *Educational institutions.* When a Commission enters into a grant or contract with an educational institution, it shall apply the provisions of OMB Circular A-21 (formerly FMC 73-8) for determining the reasonableness, allowability and allocability of costs.

(3) *For-profit entities.* When a Commission enters into an agreement with an individual or a commercial or for-profit organization, it shall apply the provisions of Subpart 1-15.2 of the Federal Procurement Regulations (41 CFR Subpart 1-15.2) for determining the reasonableness, allowability, and allocability of costs.

(4) *Other Non-profits.* When a Commission enters into an agreement with a nonprofit organization not covered under paragraphs (d) (1) and (2) of this section, it shall apply the provisions of OMB Circular A-122 for determining the reasonableness, allowability and allocability of costs.

(5) No Commission shall grant exceptions to the principles and standards of the cost principles referred to in paragraphs (d) (1), (2), (3) and (4) of this section except as specifically provided in the terms of the cost principles or as approved by the Director of OMB in writing.

(e) Under this section, references in the cited documents to terms such as Government, Federal Government, Federal agency, sponsoring agency, or grantor agency shall be read as references to the Regional Commission.

(f) Each Commission code shall provide for incorporation of the appropriate requirements of this section into the Commission's internal policies and the terms of its grants, contracts and agreements.

§ 540.207 Personnel.

Each Commission code shall meet the criteria of this section.

(a) Each Commission may employ legal counsel in order to meet its legal services needs since the Federal Government is not responsible for legal representation of a Commission.

(b) Each Commission code shall reflect the fact that the Executive Director of a Commission is the chief administrative officer of the Commission. Subject to the policies and procedures adopted by the Commission and any applicable laws, regulations and guidelines, the Executive Director is responsible for the efficient administrative operation of the Commission and is responsible to the State and Federal Cochairmen of the Commission. Each Commission shall assign such duties to the Executive Director as it deems appropriate, but, at a minimum, the Commission code shall assign the Executive Director the authority to perform the following:

(1) To supervise and manage the Commission staff in carrying out day-to-day operations and to assure that proper administrative functions are accomplished;

(2) To develop for the approval of the Commission the administrative structure of the Commission's staff and to assign functions and duties to employees;

(3) In accordance with Commission policies and after any required Commission approval, to develop and execute on behalf of the Commission—

(i) Contracts and purchase orders;

(ii) Grant agreements;

(iii) Leases;

(iv) Travel orders;

(v) Personnel actions;

(vi) Any certification which may be required for the payment of legitimate expenses;

(vii) Any binding signature which may be required for the acceptance of funds for the Commission from the Federal Government or the member states;

(4) To develop a procurement system consistent with applicable requirements and Commission policies;

(5) To prepare an annual Commission budget for the approval of the Commission;

(6) To develop a system of budget and accounting control to insure that obligations never exceed available unencumbered funds.

(c) Each Commission code shall require adequate fidelity bond coverage of the Executive Director and such other officers and employees as the Commission may determine. These bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR Part 223.

(d) Each Commission code shall require the Executive Director to keep an up-to-date position description for each of the Commission's authorized positions and to ensure that the description is applicable to and made available to the employee occupying the position.

§ 540.208 Commission records.

Each Commission code shall meet the minimum criteria of this section.

(a) Each Commission shall keep such records as will fully disclose the amount and disposition of the funds received from the Federal Government and all other donors or grantors and the total cost of the project or undertaking in connection with which such assistance is given or used. Commission records shall also include (1) an official file on each project assisted, (2) a record of key actions on individual projects which relate to both award and post-award monitoring and evaluation and close-out, in sufficient detail to understand the history of the project and its current status, and (3
such other records as will facilitate a
effective audit.

(b) Each Commission code sha
assure retention of financial record
supporting documents, statistic
records, and all other records pert
nent to its activities for a minimu
period of three years, with the follo
ing qualifications:

(1) If any litigation, claim, investig
tion or audit is started before the ex
ration of the three-year period, t
Commission shall retain the recor
until all litigations, claims, investig
tions or audit findings involving t
records have been resolved.

(2) Each Commission shall ret
records for nonexpendable prope
for three years after its final disp
tion.

(3) The three-year retention requ
ment is not applicable to a Comn
sion when records are transferred
or maintained by the Federal Gov
ment.

(4) If a record or set of record
covered by the Records Control Sch
ule for Regional Action Planning C
missions (U.S. Department of C
merce, March 1978), the Commis
shall follow the requirements of
Records Control Schedule.

(c) Unless the Records Co
Schedule provides another standa
record retention period starts

one of the following two dates, whichever is later:

(1) The last day of the Federal fiscal year during which the activities occurred for which the record is kept, or

(2) If the record concerns a project, the last day of the Federal fiscal year in which the project was completed.

(d) The Federal Cochairman shall request transfer of certain Commission records to the custody of the Federal Government when it is determined that the records possess long-term retention value.

(e) The Secretary of Commerce, the Inspector General and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers and records of a Commission and its recipients and contractors for the purpose of making audits, examinations, excerpts, and transcripts. Each Commission shall include this provision in all grants, contracts and agreements.

(f) A Commission shall provide for public access to its records. However, the Commission may impose limitations on access when it can demonstrate to the Federal Cochairman on the public record that such records (1) must be kept confidential and (2) would have been excepted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Federal Government instead of to the Commission.

(g) A Commission is authorized to substitute microfilm copies in lieu of original records.

§ 540.209 Management of Commission property.

Each Commission code shall meet the criteria of this section.

(a) Each Commission code shall contain standards relating to the management of property furnished to the Commission by the Federal Government or acquired by the Commission in whole or in part with Federal funds. A Commission may adopt its own property standards and procedures as long as the minimum criteria of this section are included in the Commission's standards. Standards on property management which the Commissions apply to their recipients are covered in OMB Circulars A-102 and A-110.

(b) *Definitions.* The following definitions apply for the purposes of property management:

(1) Real property. Real property means land, including land improvements, structures and appurtenances, thereto, but excluding movable machinery and equipment.

(2) Personal property. Property of any kind except real property. It may be tangible (having physical existence) or intangible (having no physical existence, such as patents, inventions, and copyrights).

(3) Nonexpendable personal property. Nonexpendable personal property means tangible personal property having a useful life of more than one year *and* an acquisition cost of $300 or more per unit. A Commission code may use its own definition of nonexpendable personal property provided that such definition would at least include tangible personal property as defined above.

(4) Expendable personal property. Expendable personal property refers to all tangible personal property other than nonexpendable property described in paragraph (b)(3) of this section.

(5) Excess property. Excess property means Federal property under the control of any Federal agency (not a Commission) which, as determined by the head thereof, is no longer required for the agency's needs or discharge of its responsibilities.

(6) Acquisition cost of purchased nonexpendable personal property. Acquisition cost of an item of purchased nonexpendable personal property (as defined in paragraph (b)(3) of this section) means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installations, transportation, taxes, duty, or protective intransit insurance, may be included or excluded from the unit acquisition cost in accordance with the Commission's regular accounting practices.

(c) *Real property.* (1) No Commission shall use any Federal funds to purchase real property. This prohibition does not apply to bona fide Commission grantees, whose acquisition of real property is governed by the Act and the OMB Circulars. The prohibition of this subsection does not apply to a gift or donation of real property to a Commission under the authority of 42 U.S.C. 3186(a)(6).

(2) If a Commission recovers real property from a recipient of Commission assistance which used Commission funds to purchase the property, the Commission shall abide by the standards applied to the recipient in Attachment N of OMB Circulars A-102 and A-110.

(d) *Nonexpendable personal property furnished by the Federal Government.* (1) Title to federally owned property furnished to a Commission by a Federal agency remains vested in the Federal Government unless the agency specifically transfers title to the Commission. Each Commission shall submit annually to the Federal Cochairman an inventory listing of federally owned property in its custody. When a Commission no longer needs the federally-owned property, it shall report the property to the Federal Cochairman who shall contact the Federal agency which provided the property to the Commission. If the Federal agency which furnished the property has no further need for the property, the agency (or the Federal Cochairman if authorized by the agency) shall declare the property excess and report it to the General Services Administration. After completion of Federal review, appropriate disposition instructions will be issued to the Commission.

(2) Use of federally-owned property for non-Commission activities is prohibited unless approved by the Federal Cochairman, who may require that user charges be imposed.

(e) *Other nonexpendable property.* When nonexpendable tangible personal property is purchased by a Commission using Federal funds, title to the property shall not be taken by the Federal Government but shall vest in the Commission subject to the following conditions:

(1) For items of nonexpendable personal property having a unit acquisition cost of $1,000 or more and acquired with 100% Federal funds, the Federal Cochairman reserves the right to transfer title to the Federal Government or to another Commission named by the Federal Government subject to the following standards:

(i) The property will be identified to the Commission in writing at least thirty days prior to the time the title will be transferred.

(ii) The Federal Cochairman will issue disposition instructions within 120 calendar days after the end of the fiscal year in which the notice is given. If the Federal Cochairman fails to issue disposition instructions following the 120 calendar day period, the Commission shall apply the standards of paragraph (e)(2) of this section, as appropriate to the facts of the case.

(iii) When the Federal Cochairman exercises his right to take title and provides the proper notice to the Commission, the personal property shall be subject to the provisions for federally-owned property discussed in paragraph (d) of this section.

(iv) When title is transferred either to the Federal Government or to a third party the Commission shall be reimbursed by the benefitting agency for any reasonable shipping or interim storage costs.

(2) The Commission shall use each item of property for the activity for which it was acquired. When it is no longer needed for the original activity the Commission may use the property in its other activities which are sponsored in whole or in part with Federal funds. When the Commission no longer needs the property for any activity sponsored in whole or in part with Federal funds, the property may be used for other activities in accordance with the following standards:

(i) For nonexpendable property with a unit acquisition cost of less than $1,000, the Commission may use the property as it sees fit or may sell the property and retain the proceeds.

(ii) For nonexpendable persona property with a unit acquisition cos of $1,000 or more, the Commissio may retain the property for any us provided that compensation is made the Federal Cochairman (or successor institution). The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original purchase (50% or 100%) to the current fair market value of the property. If the Commission has no need at all for the property and the property has further use value, the Commission shall request disposition instructions from the Federal Cochairman's office, which shall determine whether it can use the property. If no requirement exists, the Federal Cochairman will report the property to the General Services Administration to determine whether a requirement for the property exists in other Federal agencies. The Federal Cochairman shall issue instructions to the Commission no later than 120 days after the recipient's request for disposition instructions and the following procedures shall govern:

(A) If so instructed or if disposition instructions are not issued within 120 calendar days after the Commission's request, the Commission shall sell the property and reimburse the Federal Cochairman an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original purchase (50% or 100%). However, the Commission shall be permitted to deduct and retain from the Federal share $100 or ten percent of the proceeds, whichever is greater, for the Commission's selling and handling expenses.

(B) If the Commission is instructed to ship the property elsewhere, the Commission shall be reimbursed by the benefitting Federal agency with an amount which is computed by applying the percentage of the non-Federal (State's) participation in the cost of the original purchase to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(C) If the Commission is instructed to otherwise dispose of the property, the Commission shall be reimbursed by the Federal Cochairman for the costs incurred in the disposition.

(f) *Property management standards for nonexpendable personal property.* Each Commission code shall have property management standards for nonexpendable personal property (defined in paragraph (b)(3) which include the following procedural requirements:

(1) Property records shall include—

(i) A description of the property;

(ii) Identifying serial numbers;

(iii) Source of the property;

(iv) Acquisition date and cost, and whether title rests in the Commission or the Federal Government;

(v) Percentage of Federal participation in the cost of the activity for which the property was acquired;

(vi) Location, use and condition of the property and date this information was reported;

(vii) Unit acquisition cost; and

(viii) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where the Commission compensates the Department.

(2) Property owned by the Federal Government (paragraph (d)) shall be marked to indicate Federal ownership.

(3) A physical inventory of all property shall be taken and the results reconciled with the property and accounting records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The Commission shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage or theft of the property. Any loss, damage or theft of property shall be investigated and fully documented; if the property was owned by the Federal Government, the Commission shall promptly notify the Federal Cochairman.

(5) Adequate maintenance procedures shall be implemented to keep property in good condition.

(6) Where the Commission is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.

(g) *Expendable personal property.* Title to expendable personal property shall vest in the Commission upon acquisition. If there is a residual inventory of such property exceeding $1,000 in total aggregate fair market value upon termination of Federal funding for Commissions, the Commission shall retain the property for use on nonfederally sponsored activities, or sell it, but must in either case compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as nonexpendable personal property.

(h) *Intangible Property.* Each Commission code shall contain the following standards:

(1) Inventions and patents. If any program produces patentable items, patent rights, processes, or inventions, in the course of work sponsored by Commission funds, such fact shall be promptly and fully reported by the Commission to the Department of Commerce in accordance with instructions issued by the Department. The Department shall determine whether protection on the invention or discovery shall be sought. The Department will also determine how the rights in the invention or discovery—including rights under any patent issued thereon—shall be allocated and administered in order to protect the public interest consistent with the "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and statement of Government Patent Policy as printed in 36 FR 16889).

(2) Copyrights. The Commission has the option to allow either the author or the Commission to copyright any books, publications, or other copyrightable materials developed in the course of or under a Commission grant or contract using any funds provided by the Federal Government to the Commission, but the Department of Commerce shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, republish, or otherwise use, and to authorize others to use, the work for Government purposes.

(3) Each Commission shall include appropriate provisions in its contracts and grants to implement this subsection. The appropriate deferred patent rights clause provided for in 41 CFR 1-9.107-6(b) shall be incorporated into all grants and contracts which might produce patentable items, patent rights, processes or inventions.

§ 540.210 Income.

Each Commission code shall meet the criteria of this section.

(a) Each Commission shall accoun
for income related to any of its activi
ties or any of its projects financed i
whole or in part with Federal funds i
accordance with the standards of thi
section.

(b) Income means gross incom
earned by a Commission from activ
ties supported by Federal funds pr
vided to a Commission. Such earning
may include, but will not be limited t
income from service fees, sale of com
modities, usage or rental fees, roya
ties on patents and copyrights, a
any income which may be returned
a Commission by a recipient pursua
to the OMB Circulars.

(c) Any interest which is earned
any advances of Federal funds to
Commission shall be remitted to t
Department of Commerce.

(d) Proceeds from the sale of r
and personal property either provid
by the Federal Government or p
chased in whole or in part with Co
mission funds, shall be handled in
cordance with § 540.209 of this subp
pertaining to property management

(e) The Commission shall have
obligation to return to the Fed
Government royalties received a
result of copyrights produced u
work aided by Commission funds.
the determination of allocation
administrative rights in inventions
discoveries pursuant to § 540.20
the Department shall determine
Commission's obligation with res
to royalties received as a result of
ents produced under work aide
Commission funds.

(f) Except as provided in parag
(c), (d) and (e), all other in
earned by a Commission or rec
from a recipient shall be retaine
the Commission and, in accor
with policies on the transfer of F
al funds to the Commission, shall

(1) Added to funds committed to the particular activity from which the program income arose and used to further eligible program objectives; or

(2) Deducted from the total cost of the activity from which the program income arose in determining the net costs on which the Federal share of costs will be based.

§ 540.211 Contracting by Commissions.

Each Commission code shall meet the criteria of this section.

(a) *Scope.* This section prescribes minimum standards applicable to each Commission code as it establishes procedures for procurement of or contracting for supplies, equipment and services with funds provided in whole or in part by the Federal Government to a Commission.

(b) *Purpose.* These standards are furnished to ensure that materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal law and executive orders. No additional procurement standards or requirements shall be imposed by the Department of Commerce upon Commissions unless specifically required by Federal statute or executive orders.

(c) *Applicability.* (1) The standards in this section apply whenever the Commission uses a contract in accordance with § 540.205(a) of this subpart.

(2) A Commission is not authorized to substitute the standards of this section for the financial assistance standards of §§ 540.205 and 540.206 when there is a direct relationship between the Commission and a recipient and the scope of works or final work product is for the benefit of the recipient.

(d) *Commission responsibility.* The standards contained in this section do not relieve a Commission of the contractual responsibilities arising under its contracts. The Commission is the responsible authority, without recourse to the Department of Commerce, or to the Federal Government, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into by the Commission in support of activities using funds provided to the Commission by the Federal Government, subject to any rights of legal appeal which a contractor may have. These issues include, but are not limited to disputes; claims; protests of awards; source evaluations or other matters of a contractual nature. Matters concerning violation of law are to be referred by the Federal and State Cochairmen, Commission members or the staff immediately to the local, state, and/or Federal authority as may have proper jurisdiction.

(e) *Commission Procedures.* A Commission Code may adopt individualized procurement policies and procedures. However, all Commission Codes shall adhere to the following:

(1) *Extent of competition.* A Commission shall conduct all contract transactions (regardless of whether by formal advertising and sealed bids or by negotiation and without regard to dollar value) in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. Examples of what is considered restrictive include placing unreasonable requirements on firms in order for them to qualify to do business or unnecessary experience and bonding requirements. A Commission should be alert to organizational conflicts of interest or, non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to insure objective contractor performance and eliminate unfair competitive advantage, a contractor that develops or drafts for a particular contract specifications; requirements; a statement of work; or invitations for bids or requests for proposals should be excluded from competing for the ensuing contract.

(2) *Contracting procedures.* Each Commission Code shall establish written procedures which provide, at a minimum, the following requirements:

(i) Before making an award, Commission officials shall review proposed contracting actions to avoid purchasing unnecessary or duplicative items. Where appropriate, these officials shall make an analysis of lease and purchase alternatives or any other appropriate analysis to determine which approach would result in the most economical, practical procurement. All analyses shall be maintained in the official contract file.

(ii) Solicitations for goods and services, whether by competitive sealed bids or competitive negotiations, shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such descriptions shall not, in competitive procurement, contain features which unduly restrict competition. When it is impractical or uneconomical to make a clear and accurate technical description, "brand name or equal" descriptions may be used as a means to define the performance or other salient requirements of a procurement, and when so used the specific features of the named brand which must be met by bidders/offerors shall be clearly specified.

(iii) Solicitations of offers shall also clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(iv) In accordance with national policy each Commission shall make positive efforts to utilize small business concerns and minority-owned and women's business enterprises as sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts utilizing Federal funds. Commissions are encouraged to procure supplies from labor surplus areas.

(v) *Type of contract instrument.* The type of instrument used (i.e., fixed price contracts, cost reimbursable contracts, purchase order, etc.), shall be determined by the Commission but must be appropriate for the particular transaction and for promoting the best interest of the Commission program involved. (41 CFR 1-2.104 and Subpart 1-3.4 provide some guidance in selecting the appropriate contract type.) The "cost-plus-a-percentage-of-cost-fee" and the percentage of construction cost method of contracting shall not be used.

(vi) *Responsible contractors.* A Commission shall award a contract only to a responsible contractor that possesses the potential ability to perform successfully under the terms and conditions of a proposed contract. The Commission shall give consideration to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources or accessibility to other necessary resources.

(vii) *Sole source (Noncompetitive Negotiation).* All proposed sole source contracts, or where only one bid or proposal is received, in which the aggregate cost is expected to exceed $5,000, shall not be approved until a written justification for the sole source, or one-bid, contract is placed in the official project file. (See § 540.211(e)(3)(iv) of this part.)

(viii) *Technical evaluations and cost or price analysis.* Each Commission shall perform and document in the project files a technical evaluation and a cost or price analysis in connection with every contract action, including contract modifications. (41 CFR 1-3.807 and 1-3.808 provide some guidance on cost/price analysis.) Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Costs analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability. The method and degree of analysis, however, is dependent on the facts surrounding the particular contract. The Commission should perform cost analysis when the offeror is required to submit the elements of his/her estimated cost for sole source contracts, and when adequate price competition is lacking, e.g., when only a single bid is received and it is impossible to perform a valid price analysis. Price analysis should be used in all other instances to determine the reasonableness of the proposed contract price.

(ix) Costs or prices based on estimated costs for contracts shall be allowed only to the extent that cost incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.

(x) *Commission contract records.* Each Commission shall maintain records or files sufficient to detail the significant history of every contract. Records or files for each contract in

xcess of $10,000 shall include, but are
ot necessarily limited to, the follow-
ng information:

(A) Rationale for the method of pro-
urement;

(B) Basis for contractor selection;

(C) Justification for lack of competi-
ion when competitive bids or offers
re not obtained;

(D) Basis for award cost or price;
nd

(E) Evidence of administering and
onitoring actions during contract
erformance.

(xi) *Contract administration.* Each
ommission shall maintain a system
or contract administration to insure
hat contractors perform in accord-
nce with the terms, conditions and
pecifications of their contract or pur-
hase order (including modifications),
nd to identify and endeavor to re-
olve conditions that might adversely
ffect the Commission's interest.

(3) *Methods of Contracting.* Con-
racting shall be made by one of the
ollowing methods, as described
erein: small purchase procedures,
ompetitive sealed bids (formal adver-
sing), competitive negotiation, and
oncompetitive negotiation.

(i) Small purchase procedures are
ose relatively simple and informal
rocurement methods that are sound
nd appropriate for a procurement of
rvices, supplies or other property,
osting in the aggregate not more
an $10,000. Price or rate quotations
all be obtained from an adequate
umber of qualified sources.

(ii) In competitive sealed bids
ormal advertising), sealed bids are
ublicly solicited and a firm-fixed-
rice contract (lump sum or unit
rice) is awarded to the responsible
dder whose bid, conforming with all
e material terms and conditions of
e invitation for bids, is lowest in
rice.

(A) In order for formal advertising
be feasible, appropriate conditions
ust be present, including, as a mini-
um, the following:

(*1*) A complete, adequate and realis-
c specification or purchase descrip-
on is available.

(*2*) Two or more responsible suppli-
s are willing and able to compete ef-
ctively for the grantee's business.

(*3*) The procurement lends itself to a firm-fixed-price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.

(B) If formal advertising is used, the following requirements shall apply:

(*1*) A sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of known suppliers. In addition, the invitation shall be publicly advertised.

(*2*) The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation.

(*3*) All bids shall be opened publicly at the time and place stated in the invitation for bids.

(*4*) A firm-fixed-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine low bid when prior experience of the Commission indicates that such discounts are generally taken.

(*5*) Any or all bids may be rejected when there are sound documented business reasons in the best interest of the program.

(iii) In competitive negotiation, proposals are requested from a number of sources and the Request for Proposal is publicized, negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising. If competitive negotiation is used the following requirements shall apply:

(A) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposals shall be publicized and reasonable request by other sources to compete shall be honored to the maximum extent practicable.

(B) The request for proposal shall identify all significant evaluation factors, including price or cost where required and their relative importance.

(C) The Commission shall provide mechanisms for technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(D) Award may be made to the responsible offeror whose proposal will be most advantageous to the Commission, price and other factors considered. Unsuccessful offerors should be notified promptly.

(E) Commissions may utilize competitive negotiation procedures for procurement of Architectural/Engineering professional services, whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.

(iv) Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is infeasible under small purchase, competitive bidding (formal advertising) or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

(A) The item is available only from a single source;

(B) Public exigency or emergency, when the urgency for the requirement will not permit a delay incident to competitive solicitation; or

(C) After solicitation of a number of sources, competition is determined inadequate.

(f) *Contract Provisions.* Each Commission shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. These provisions shall also be applied to subcontracts.

(1) Contracts other than small purchases shall contain contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances in which contractors violated or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

(2) All contracts in excess of $10,000 shall contain suitable provisions for termination by the Commission including the manner by which termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) All contracts awarded by a Commission and its contractors or subcontractors having a value of more than $10,000 shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

(4) Where applicable, all contracts awarded by a Commission or by its contractors in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (20 CFR Part 5 Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard work day or workweek is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of hours in any calendar day or 40 hours in the workweek. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his health and safety as determined under construction safety and health standards promu

gated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of information.

(5) All contracts awarded by a Commission shall include a provision to the effect that the Commission, the Federal Cochairman, the Secretary of Commerce, the Inspector General and the Comptroller General of the United States, or any of their duly authorized repesentatives, shall have access to any books, documents, paper, and records of the contractor which are directly pertinent to a specific program for the purpose of making audit, examination, excerpts, and transcriptions. A Commission shall require its contractors to maintain all required records for three years after the Commission makes final payments.

(6) Contracts and subcontracts of amounts in excess of $100,000 shall contain a provision that requires the contractor or recipient to agree to comply with all applicable standards, orders or requirements issued under section 306 of the Clear Air Act, (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under non-exempt contracts, grants or loans of facilities included on the EPA list of Violating Facilities. A Commission shall report violations to the Department of Commerce and to the Environmental Protection Agency Assistant Administrator for Enforcement EN-329).

(7) All contracts and subcontracts or construction or repair shall include provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in De- artment of Labor regulations (29 CFR Part 3). This Act provides that ach contractor or subcontractors hall be prohibited from inducing, by ny means, any person employed in he construction, completion, or repair f public work, to give up any part of he compensation to which he is otherwise entitled. The Commission shall report all suspected or reported violations to the Inspector General of the Department of Commerce.

(8) All construction contracts in excess of $2,000 awarded by the Commission and its subcontractors shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The Commission shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The Commission shall report all suspected or reported violations to the Inspector General of the Department of Commerce.

(9) Each contract shall include notice of Department of Commerce requirements and regulations pertaining to reporting and patent rights under any contract involving research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed in the course of or under such contract, and of Department of Commerce requirements and regulations pertaining to copyrights and rights in data. (See § 540.209(h) of this part for appropriate guidance.)

(10) Contracts shall require mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

(g) *Protest Procedures.* The Department of Commerce may develop an administrative procedure to handle complaints or protests regarding Commission contractor selection actions. The procedure shall be limited as follows:

(1) No protest shall be accepted by Commerce until all administrative remedies at the Commission level have been exhausted.

(2) Review is limited to—

(i) Violations of Federal law or regulations. Violations of State or local law shall be under the jurisdiction of State or local authorities.

(ii) Violations of the Commission's protest procedures or failure to review a complaint or protest.

Subpart C—Nondiscrimination

§ 540.301 Title VI, Civil Rights Act of 1964.

The provisions of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000 d *et seq.*, shall apply to each Commission as an entity empowered to extend Federal financial assistance and as a recipient of such assistance. Each Commission shall adopt as its own requirements the regulations of the Department of Commerce implementing Title VI contained in 15 CFR, Subtitle A, Part 8. The Commission and every program or activity receiving Federal assistance directly or indirectly from or through the Commission, shall be subject to and comply with those regulations adopted by the Commission.

§ 540.302 Other statutes.

Each Commission and its recipients shall comply with the following nondiscrimination statutes and regulations:

(a) Title IX of the Education Amendments Act of 1972 (20 U.S.C. 1681) prohibiting discrimination on the basis of sex in federally assisted education programs or activities.

(b) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) prohibiting discrimination on the basis of handicap under any program or activity receiving Federal financial assistance.

(c) The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*) prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance; and

(d) Section 112 of Pub. L. 92-65 (42 U.S.C. 3123) prohibiting sex discrimination under any program or activity receiving assistance under the Public Works and Economic Development Act of 1965, as amended.

Subpart D—Com

§ 540.401 Purpose.

This subpart describes
which the Secretary of
monitor and evaluate
compliance with the re
this Chapter and with a
eral law.

§ 540.402 Evaluation.

(a) The Secretary s
monitoring and reporti
which may be necessary
termine compliance by
sion with applicable F
with the standards co
Chapter (13 CFR Chapt

(b) The Secretary sh
evaluate each Commis
ance and compliance wi

§ 540.403 Audits.

In accordance with a
al law and policy, the I
al of the Department
shall establish a schedu
Commissions.

§ 540.404 Remedies for n

(a) If a Commission
with any requirement
or the Act, and after re
to the Commission, the
take such steps as ma
including the suspens
for the Commission an
ing of further paymen
rective action by the
other appropriate acti
partment of Commerce

(b) In accordance wi
ble Federal laws and
partment shall provide
ty for a hearing in cas
of funding or the
funds.

PART 550—TECH
PLANNING AS

Sec.
550.1 Authority and pur
550.2 Type and form of
Secretary.
550.3 Type and form of
commissions.

Sec.
550.4 Administrative expense grants to substate planning and development organizations.
550.5 Limitations.

Authority: 42 U.S.C. 3181 et seq.; 42 U.S.C. 3211; Executive Order 11386, dated Dec. 28, 1967.

Source: 40 FR 48116, Oct. 14, 1975, unless otherwise noted.

§ 550.1 Authority and purpose.

Section 505 of the Act (42 U.S.C. 3185) authorizes technical and planning assistance to further the purposes of the Act. Section 505(a)(2) authorizes the commissions to carry out a program of technical assistance.

§ 550.2 Type and form of assistance by the Secretary.

(a) Technical assistance may be undertaken by the Secretary or the Special Assistant for Regional Economic Coordination either (1) on his own initiative with respect to the regions generally or with respect to an existing or proposed region for which a commission has not yet been formed, or (2) upon the request of any regional commission. It may include studies and plans evaluating the needs of, and developing potentialities for, the economic growth of such region, and research on improving the conservation of human and natural resources of the region, and demonstration projects and training programs.

(b) Technical assistance may be provided through:

(1) Members of the staff of the Department of Commerce;

(2) The payment of funds to other departments or agencies of the Federal Government;

(3) The employment of private individuals, partnerships, firms, corporations, or suitable institutions, under contracts entered into for such purposes.

(4) Grants-in-aid to the commissions.

(c) The Secretary or the Special Assistant for Regional Economic Coordination may in his discretion require the repayment of technical assistance and prescribe the terms and conditions of such repayment.

§ 550.3 Type and form of assistance by the commissions.

(a) The commissions may undertake planning projects, investigations, studies, demonstration projects and training programs and make administrative expense grants to substate planning and development organizations (including economic development districts) which will further the purposes of the Act. Such activities shall be in accord with the commission's annual financial plan submitted to and approved by the Secretary or the Special Assistant for Regional Economic Coordination.

(b) Technical and planning assistance may be provided by the commissions through:

(1) The payment of funds to departments, agencies or instrumentalities of the Federal Government;

(2) Contracts with private individuals, partnerships, firms, corporations, or suitable institutions; or

(3) Grants-in-aid to agencies of State or local governments.

(c) In the case of demonstration projects and training programs, the commission shall to the maximum extent possible carry out the activity through agencies or instrumentalities of the Federal Government or of State or local governments.

§ 550.4 Administrative expense grants to substate planning and development organizations.

(a) The commissions may provide administrative expense grants to substate planning and development organizations (including economic development districts) wholly or partially within the boundaries of their economic development regions.

(b) To be eligible for administrative expense grants from a regional commission, the substate organization must be established pursuant to State law or applicable executive order issued by the Governor. Such organizations must be multi-jurisdictional. At least a simple majority of the organization's governing body must be elected officials of the constituent jurisdictions.

(c) Each commission may determine the amount and the terms and conditions of administrative expense grants to substate planning and development organizations, provided that first priority will be given to substate organizations which do not qualify for or not receiving administrative expense assistance from the Economic Development Administration. Applications for administrative expense grants filed by districts organized or funded under Economic Development Administration auspices will be approved by the Federal Cochairman only after the application has been reviewed by the Assistant Secretary of Commerce for Economic Development.

§ 550.5 Limitations.

(a) Technical assistance funds may not be used to cover the cost of work already performed or of services already provided.

(b) Technical information resulting from the commission's activities should be freely made available to the general public.

(c) The commission must agree to assign any patents resulting from inventions developed through Federal funds to the Federal Government.

(d) The commission must agree to assign any copyrights for material produced through Federal funds to the Federal Government, and to obtain necessary permissions to use materials copyrighted by others.

(e) Other terms and conditions may be imposed in the Offer of Grant Assistance.

(f) In appropriate circumstances, and after due notice and adequate opportunity for hearing, the Secretary or his Special Assistant for Regional Economic Coordination may suspend the financial assistance approved under this subpart upon a formal finding that the commission is in violation of the terms of the grant offer or the provisions of these regulations.

(g) No part of the Federal grant funds shall be used, either directly or indirectly, to assist, solicit, or encourage and relocating of any business establishment from one area to another or to assist, solicit, or encourage the transfer of contract or subcontract work which would result in a transfer of jobs causing unemployment at a location where such work was previously performed, or to pay any part of the compensation or expense of employees who may at any time engage in such activities for which such funds may not be used.

(h) The commission shall keep, and shall require its grantees and contractors to keep such records as will fully disclose the amount and disposition of the total budgeted funds, the purpose of the undertaking for which such funds were used, the amount and nature of all contributions from other sources, and such other records as may be necessary. Records pertaining to the expenditures of Federal funds should be preserved for a period of not less than three (3) years following disbursement of funds.

(i) The Secretary of Commerce and the Comptroller General of the United States or their duty authorized representatives shall have access for the purpose of audit and examination to any books, documents, papers, and records of the commission pertaining to the expenditure of Federal funds that will facilitate an effective audit.

PART 551—REGIONAL TRANSPORTATION

Sec.
551.1 Authority and purpose.
551.2 Studies and investigations.
551.3 Regional transportation networks.
551.4 Transportation demonstration projects.
551.5 Grants for planning, construction purchase of equipment and operation of demonstration project.
551.6 Construction or equipment of any component of a regional transportation demonstration projects.
551.7 Project financing.
551.8 Limitation on funds.
551.9 Eligible grant applicants.
551.10 Transfer of funds.
551.11 Records retention.

AUTHORITY: 42 U.S.C. 3192; 42 U.S.C. 3211 Executive Order 11386 (Dec. 28, 1967), and Dept. of Commerce Organization Order 15- (Aug. 30, 1975).

SOURCE: 42 FR 22135, May 2, 1977, unless otherwise noted.

§ 551.1 Authority and purpose.

Section 513 of the Act (42 U.S.C. 3192) authorizes each regional commission, with the assistance of the

ecretary of Transportation, to con-
uct investigations and studies of the
egion's transportation needs, to make
rants for the planning of regional
ansportation networks, and to make
rants for the construction, purchase
f equipment, and operation of trans-
ortation demonstration projects.

551.2 Studies and investigations.

(a) Each regional commission, with
e assistance of the Secretary of
ansportation, is authorized to con-
ct and facilitate full and complete
vestigations and studies of the trans-
rtation needs of its economic devel-
ment region established under sec-
n 501 (42 U.S.C. 3181) of the Act.
b) Such studies and investigations
uld analyze the effectiveness of re-
nal transportation systems for
eting purposes of the Act.
) Information gathered from such
dies and investigations should de-
mine the types of transportation
uld determine the types of trans-
tation facilities needed in the
on and be of value in planning for
 transportation facilities.

.3 Regional transportation networks.

ch regional commission, with the
stance of the Secretary of Trans-
ation, is authorized to make
ts for the planning of regional
sportation networks.
 The plans for these transporta-
 networks should develop the
er mix of all transportation
es so as to best serve the econom-
cial, and environmental interests
e region.
 As the regional commissions
 and plan their transportation
ms, they should not only plan
systems but should study existing
portation programs and attempt
egrate their plans with these on-
 transportation programs.

Transportation demonstration ojects.

regional transportation demon-
on project should meet the fol-
 requirements:
Responds to an identified trans-
ion need or problem in the
.

(b) Possesses innovative characteristics for the area or region.

(c) Has objectives which are realistically attainable.

(d) May provide a useful model for others to emulate.

(e) Attracts other resources to assist in meeting a part of the cost and the total costs shall be reasonable in relation to the need for the project and the benefits to be gained.

§ 551.5 Grants for planning, construction, purchase of equipment and operation of demonstration projects.

Each regional commission, with the assistance of the Secretary of Transportation, is authorized to make grants for the construction, purchase of equipment, and operation of transportation demonstration projects. Such funds:

(a) Should be used for projects which possess new or refined organizational, operational, or technical approaches to meet regional transportation needs.

(b) May be used for payment of operating deficits.

(c) Should not be used in lieu of private capital particularly to construct facilities although useful to the development of a particular resource of the various regions.

§ 551.6 Construction or equipment of any component of a regional transportation demonstration project.

(a) No grant for the construction or equipment for any component of a demonstration transportation project shall exceed 80 percent of such cost.

(b) The Federal contribution may be provided entirely from funds authorized under section 513 of the Act (42 U.S.C. 3192) or in combination with funds authorized under other Federal grant-in-aid programs for the construction of transportation facilities.

(c) The Federal portion of project costs shall not exceed 80 percent of project costs and funds authorized under section 513 of the Act may be used to increase the Federal share of any such project to 80 percent of the cost of such facilities.

§ 551.7 Project financing.

Grants under this part shall be made solely out of funds specifically appropriated for the purpose of carrying out Title V of the Act and shall not be taken into account in the computation of the allotments among the States made pursuant to any other provisions of law.

§ 551.8 Limitation on funds.

In carrying out this part no regional commission shall expend more than $5,000,000 in any one fiscal year.

§ 551.9 Eligible grant applicants.

(a) States in the region, alone or with another member State, as well as any political subdivision of the States.

(b) Agencies of State and local governments.

(c) Local multijurisdictional or State public transportation authorities.

(d) State of federally licensed or certificated common carriers that the commission may approve.

(e) Such other institutions or organizations permitted by law and approved by the commission.

§ 551.10 Transfer of funds.

When the contribution is supplied by the commission and is provided in combination with funds available under other Federal grant-in-aid programs, the Federal Cochairman will, where appropriate, transfer funds for the consruction, purchase of equipment, and operation (including payment of operation deficits) of such projects to the basic Federal grant agency administering the grant program or project being supplemented pursuant to a grant agreement between the Federal Cochairman and the appropriate official of the basic agency.

§ 551.11 Records retention.

(a) The commission shall keep, and shall require its grantees and contractors to keep, such records as will fully disclose the amount and disposition of the total budgeted funds, the purpose of the undertaking for which such funds were used, the amount and nature of all contributions from other sources, and such other records as may be necessary. Records pertaining to the expenditures of Federal funds should be preserved for a period of not less than three (3) years following disbursement of funds.

(b) The Secretary of Commerce and the Comptroller General of the United States or their duly authorized representatives shall have access for the purpose of audit and examination to any books, and documents, papers, and records of the commission pertaining to the expenditure of Federal funds that will facilitate an effective audit.

PART 552—ENERGY DEMONSTRATION PROJECTS AND PROGRAMS

Sec.

552.1 Authority and purpose.
552.2 Regional energy policy.
552.3 Energy-related demonstration programs and projects.
552.4 Grants for demonstration program
and projects.
552.5 Limitation on funds.
552.6 Transfer of funds.
552.7 Eligible grant applicants.
552.8 Records retention.

AUTHORITY: 42 U.S.C. 3194; 42 U.S.C. 321
Executive Order 11386 (Dec. 28, 1967); an
Dept. of Commerce Organization Order 15-
(Aug. 30, 1975).

SOURCE: 42 FR 22136, May 2, 1977, unle
otherwise noted.

§ 552.1 Authority and purpose.

Section 515 of the Act (42 U.S.
3194) authorizes each regional com
mission to carry out energy-relate
demonstration projects and program
Each regional commission should d
velop a regionwide strategy for (a) a
ticipating the effects of alternati
energy policies, and practices, (b) pla
ning for accompanying growth ar
change so as to maximize social ar
economic benefits and minimize th
social and environmental costs, and
implementing programs and projec
to be carried out in the region by Fe
eral, State and local government age
cies in a coordinated way so as
better meet the special problems ge
erated in the region by the Natio
energy needs and policies. Such spec
problems include those related

transportation, housing, community facilities and human services.

§ 552.2 Regional energy policy.

To formulate regional energy policies, the Federal Cochairmen and the regional commissions shall work closely with those Federal and State agencies having primary responsibility for developing national energy policy and basic energy research and development.

§ 552.3 Energy-related demonstration programs and projects.

Each regional commission is authorized to carry out energy-related demonstration projects and programs within its region, including programs and projects addressing the social, economic, and environmental impact of energy development, requirements, and utilization. An energy-related demonstration project should meet the following requirements:

(a) Responds to an identified energy impact or problem in the region.

(b) Possesses innovative characteristics for the area or region.

(c) Has objectives which are realistically attainable.

(d) May provide a useful model for others to emulate.

(e) Attracts other resources to assist in meeting a part of the cost and the total costs should be reasonable in relation to the need for the project and the benefits to be gained.

§ 552.4 Grants for demonstration programs and projects.

(a) Grants shall be made only to those projects which are developed through regional planning designed to identify the effects of regional resource development, requirements, utilization, and impact.

(b) The Federal contribution may be provided entirely from funds authorized under section 515 of the Act (42 U.S.C. 3194) or in combination with funds authorized under other Federal grant-in-aid programs.

§ 552.5 Limitation on funds.

In carrying out this part no regional commission shall expend more than $5,000,000 in any one fiscal year.

§ 552.6 Transfer of funds.

When the contribution is supplied by the commission and is provided in combination with funds available under other Federal grant-in-aid programs, the Federal Cochairman will, where appropriate, transfer funds for such projects to the basic Federal grant agency administering the grant program or project being supplemented pursuant to a grant agreement between the Federal Cochairman and the appropriate official of the basic agency.

§ 552.7 Eligible grant applicants.

(a) States in the region alone or with another member State as well as any political subdivision of the States.

(b) Agencies of State and local governments.

(c) Such other institutions or organizations permitted by law and approved by the commission.

§ 552.8 Records retention.

(a) The commission shall keep, and shall require its grantees and contractors to keep, such records as will fully disclose, the amount and disposition of the total budgeted funds, the purpose of the undertaking for which such funds were used, the amount and nature of all contributions from other sources, and such other records as may be necessary. Records pertaining to the expenditures of Federal funds should be preserved for a period of not less than three (3) years following disbursement of funds.

(b) The Secretary of Commerce and the Comptroller General of the United States or their duly authorized representatives shall have access for the purpose of audit and examination to any books, and documents, papers, and records of the commission pertaining to the expenditure of Federal funds that will facilitate an effective audit.

PART 553—HEALTH AND NUTRITION DEMONSTRATION PROJECTS [RESERVED]

PART 554—EDUCATION DEMONSTRATION PROJECTS [RESERVED]

PART 555—INDIGENOUS ARTS AND CRAFTS DEMONSTRATION PROJECTS

Sec.
555.1 Authority and purpose.
555.2 Eligible grant applicants.
555.3 Limitation on funds.
555.4 Records retention.

AUTHORITY: 42 U.S.C. 3194; 42 U.S.C. 3211; Executive Order 11386 (Dec. 28, 1967); and Dept. of Commerce Organization Order 15-5 (Aug. 30, 1975).

SOURCE: 42 FR 23137, May 2, 1977, unless otherwise noted.

§ 555.1 Authority and purpose.

Pursuant to section 515 of the Act (42 U.S.C. 3194), each regional commission is authorized to carry out demonstration projects within its region in connection with the development and stimulation of indigenous arts and crafts of the region.

§ 555.2 Eligible grant applicants.

(a) States in the region, alone or with another member State, as well as any political subdivision of the States.

(b) Agencies of State and local governments.

(c) Indian tribe, band, group, pueblo recognized by the Federal Government or by the States of the region in which the tribe, band, group, or pueblo is located.

(d) Nonprofit or tax supported organizations established to foster and encourage development of indigenous arts and crafts.

(e) Such other institutions or organizations permitted by law and approved by the commission.

§ 555.3 Limitation on funds.

In carrying out this part no regional commission shall expend more than $2,500,000 in any one fiscal year.

§ 555.4 Records retention.

(a) The commission shall keep, and shall require its grantees and contractors to keep, such records as will fully disclose the amount and disposition of the total budgeted funds, the purpose of the undertaking for which such funds were used, the amount and nature of all contributions from other sources, and such other records as may be necessary. Records pertaining to the expenditures of Federal funds should be preserved for a period of not less than three (3) years following disbursement of funds.

(b) The Secretary of Commerce and the Comptroller General of the United States or their duly authorized representatives shall have access for the purpose of audit and examination to any books, and documents, papers and records of the commission pertaining to the expenditure of Federal funds that will facilitate an effective audit.

PART 560—SUPPLEMENTS TO FEDERAL GRANTS-IN-AID

Sec.
560.1 Authority and purpose.
560.2 Supplements to local applicants share.
560.3 Supplements to Federal grant agencies.
560.4 Criteria for project approval.
560.5 Applications.
560.6 Transfer of funds.
560.7 Definition of Federal grant-in-aid programs.
560.8 Records retention.

AUTHORITY: 42 U.S.C. 3181 et seq.; 42 U.S.C. 3211; Executive Order 11386, dated Dec. 28, 1967.

SOURCE: 40 FR 48116, Oct. 14, 1975, unless otherwise noted.

§ 560.1 Authority and purpose.

Section 509 of the Act (42 U.S.C. 3188a) authorizes the Secretary to provide funds to the Federal Cochairmen of the commissions to supplement Federal grants-in-aid to States and other entities in economic development regions established under the Act. Such funds may be provided to a Federal Cochairman only after a comprehensive long-range plan has been established pursuant to section 503(a)(2) of the Act (42 U.S.C. 3188(a)(2)) and in accordance with the annual financial plan submitted to an approved by the Secretary or the Special Assistant for Regional Economic Coordination.

§ 560.2 Supplements to local applicant's share.

The supplemental grant may be used to increase the Federal contribution to a program or project above the fixed maximum otherwise authorized by applicable law upon a finding by the commission that the applicant is financially unable to supply the required matching portion because of its economic situation.

§ 560.3 Supplements to Federal grant agencies.

The supplemental grant may be used to provide all or any portion of the basic Federal contribution to a program or project, provided that such contribution may be made only upon the certification by the responsible Federal official administering the grant-in-aid Act that the program or project meets all of the requirements of such Federal grant-in-aid Act and could be approved for Federal contribution if funds were available under such Act for the program or project.

§ 560.4 Criteria for project approval.

(a) No program or project shall be implemented under section 509 of the Act (42 U.S.C. 3188a) until (1) applications and plans relating to the program or project have been determined by the responsible Federal official to be compatible with the provisions and objectives of the Federal laws which he administers which are not inconsistent with the Public Works and Economic Development Act, as amended, and (2) the Regional Commission involved has approved such program or project and has determined that it meets applicable criteria of section 504 of the Act (42 U.S.C. 3184).

(b) The Federal portion of program or project costs shall not be increased n excess of the percentages established by each commission and in no event shall they exceed 80 percent of project costs.

§ 560.5 Applications.

An application for a grant under section 509 of the Act shall be made through the State member of the Commission representing the applicant. The State member shall evaluate the application for approval and only applications approved by the appropriate State member as meeting requirements for assistance shall be approved for assistance by the Commission.

§ 560.6 Transfer of funds.

The Federal Cochairmen will transfer such funds to the basic Federal grant agency administering the grant program or project being supplemented pursuant to a grant agreement between the Federal Cochairman and the appropriate official of the basic agency.

§ 560.7 Definition of Federal grant-in-aid programs.

The term "Federal grant-in-aid programs" as used in this subpart means all Federal grant-in-aid programs in existence on or before September 30, 1979, assisting in the acquisition or development of land, the construction or equipment of facilities, or other community or economic development or economic adjustment activities, including but not limited to grant-in-aid programs authorized by the following Acts: Federal Water Pollution Control Act; Watershed Protection and Flood Prevention Act; title VI and XVI of the Public Health Service Act; Vocational Education Act of 1963; Library Services and Construction Act; Federal Airport Act; Airport and Airway Development Act of 1970; Part IV of title III of the Communications Act of 1934; titles VI (Part A) and VII of the Higher Education Act of 1965; Land and Water Conservation Fund Act of 1965; National Defense Education Act of 1958, Consolidated Farm and Rural Development Act; and titles I and IX of the Public Works and Economic Development Act.

[42 FR 22137, May 2, 1977]

§ 560.8 Records retention.

(a) The commission shall keep, and shall require its grantees and contractors to keep, such records as will fully disclose the amount and disposition of the total budgeted funds, the purpose of the undertaking for which such funds were used, the amount and and nature of all contributions from other sources, and such other records as may be necessary. Records pertaining to the expenditures of Federal funds should be preserved for a period of not less than three (3) years following disbursement of funds.

(b) The Secretary of Commerce and the Comptroller General of the United States or their duly authorized representatives shall have access for the purpose of audit and examination to any books, and documents, papers, and records of the commission pertaining to the expenditure of Federal funds that will facilitate an effective audit.

PART 580—COORDINATION

Sec.
580.1 Authority and purpose.
580.2 Role of the Federal Cochairmen.
580.3 Procedures for coordination.
580.4 Coordination with the Economic Development Administration.
580.5 Coordination with other Federal agencies.

AUTHORITY: 42 U.S.C. 3181 et seq.; 42 U.S.C. 3211; Executive Order 11386, dated Dec. 28, 1967.

SOURCE: 40 FR 48117, Oct. 14, 1975, unless otherwise noted.

§ 580.1 Authority and purpose.

The Secretary of Commerce is authorized by section 601(a) of the Act (42 U.S.C. 3201) and by Executive Order 11386, as amended, to coordinate activities of the Federal Cochairmen appointed pursuant to the provisions of the Act. In addition, section 511 of the Act (42 U.S.C. 3190) provides that the Secretary shall coordinate his activities in making grants and loans and providing technical assistance under the Act with regional commissions and that regional commissions in turn coordinate their grant and technical assistance activities with the Secretary. The purpose of this subpart is to outline a procedure for insuring that such coordination is effectively carried out.

§ 580.2 Role of the Federal Cochairmen.

Federal Cochairmen appointed by the President to Regional Action Planning Commissions are responsible actively presenting to their comm sions the policies and viewpoints the Federal Executive Branch. E Federal Cochairman has the additi al responsibility of providing the i vidual or collective positions of State Members (Governors) of commission to departments and a cies of the Executive Branch on r ters pertinent to the developmen the commission's program.

§ 580.3 Procedures for coordination.

In carrying out their assigned sponsibilities, the Federal Cochair shall maintain a close working tionship with the Secretary thr the Special Assistant for Reg Economic Coordination, keep the propriate Federal departments agencies informed of programs projects to be considered by the missions. Pursuant to this respon ity, each Federal Cochairman sha

(a) Provide periodic reports t Secretary or Special Assistant as be prescribed, setting forth the policy issues expected to arise i course of the program and to be sidered by the regional commi and

(b) Keep the Secretary advis matters affecting the Federal in in his region.

(c) Execute and perform all res bilities assigned to the Federa chairmen by Executive Order 113

§ 580.4 Coordination with the Ec Development Administration.

(a) The Federal Cochairmen a Special Assistant for Regiona nomic Coordination shall meet larly with the Assistant Secreta Economic Development to insu their respective programs are nated and do not overlap, duplic compete. The Federal Coch shall establish and maintain co ble coordination relationships w appropriate regional directors Economic Development Adm tion.

(b) Upon request of the Ec Development Administration t eral Cochairman will provide sistant Secretary for Economic opment and the appropriate Economic Development Administration regional director with commission comments on any EDA project or program wholly or partially located within the boundaries of the commission.

(c) Each Federal Cochairman shall insure that all Economic Development Administration regional directors with programs in his commission area are invited to participate in the development of overall commission planning documents and are provided copies of completed planning documents and revisions.

(d) Each Federal Cochairman shall request review and comment by the Assistant Secretary for Economic Development of all applications for technical assistance filed with his commission by districts organized under Economic Development Administration auspices.

§ 580.5 Coordination with other Federal agencies.

(a) Each Federal Cochairman will consult with the regional directors of Federal agencies with programs in his commission area as his commission formulates regional development plans and plans the commission's work program. The formulation of regional counterparts of the Federal Advisory Council on Regional Economic Development is encouraged as a means of such consultation and coordination.

(b) Each Federal Cochairman is encouraged to cooperate and work with the Federal Regional Council, or Councils, with responsibilities in his commission area as a further means of program coordination.

PART 581—INTERAGENCY EVALUATION, REVIEW AND COORDINATION OF PROGRAMS AND PROJECTS

Sec.

581.1 Authority and purpose.
581.2 Action by the Federal Cochairman.
581.3 Applications for commission assistance.
581.4 Consultation and review.
581.5 Action by the applicant.
581.6 Action by the regional commission.
581.7 Exemptions.

Authority: 42 U.S.C. 3181 et seq.; 42 U.S.C. 3211; Executive Order 11386, dated Dec. 28, 1967; Dept. of Commerce Organization Order 15-5 (Aug. 30, 1975); OMB Circular A-95.

Source: 41 FR 15835, Apr. 15, 1976, unless otherwise noted.

§ 581.1 Authority and purpose.

The purpose of this part is to enunciate the responsibilities of the Federal Cochairmen in implementing Attachment A, Part 1, "Project Notification and Review System," of OMB Circular A-95 in the exercise of their responsibilities in the granting of funds and the approval of projects under section 505(a)(2) of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3185(a)(2)) for technical and planning assistance including administrative expense grants to substate planning and development organizations. The Technical and Planning Assistance program numbers for each regional commission published in the "Catalog of Federal Domestic Assistance" are as follows:

Name of Commission	Catalog No.
Coastal Plains Regional Commission	28.002
Four Corners Regional Commission	38.002
New England Regional Commission	48.002
Ozarks Regional Commission	52.002
Upper Great Lakes Regional Commission	63.002
Old West Regional Commission	75.002
Pacific Northwest Regional Commission	76.002

§ 581.2 Action by the Federal Cochairman.

The Federal Cochairman of each regional commission shall recommend that the provisions of OMB Circular A-95, as set forth in this part, be complied with in the processing of technical assistance projects and programs and administrative expense grants to substate planning and development organizations.

§ 581.3 Applications for commission assistance.

(a) Applicants to a regional commission for technical and planning assistance and for administrative expense grants to substate planning and development organizations must comply with the appropriate provisions of Attachment A, Part 1, of OMB Circular A-95.

(b) If a proposed technical and planning assistance activity is statewide or multistate in nature, prior notification shall be sent to the appropriate State clearinghouses. Demonstration projects, other technical planning assistance projects, and administrative expense grants to substate planning and development organizations, which have specific local impact shall be sent for review and comment to the appropriate areawide clearinghouse of jurisdiction as well as the appropriate State clearinghouse.

§ 581.4 Consultation and review.

OMB Circular A-95 provides that State and areawide clearinghouses may have up to 30 days after receipt of a project notification in which to inform appropriate State and local agencies that may be affected by the proposed project and arrange, if necessary, to consult with the applicant. Clearinghouses may establish cooperative procedures with applicants for further review of projects if necessary. If questions still remain unresolved, the clearinghouse may have an additional 30 days for review of the completed application.

§ 581.5 Action by the applicant.

(a) Any agency of State or local government or any non-profit organization applying for assistance to a regional commission for a new project or a major modification to an existing project involving technical and planning assistance or administrative expense grants to substate planning and development organizations will be required to notify both State and areawide planning and development clearinghouses in the jurisdiction in which the project is to be located. (Applications from federally recognized Indian tribes are not subject to these requirements. However, they may voluntarily participate.)

(b) In the case of an application for an activity that is statewide or broader in nature and does not have specific applicability to nor effect on areawide or local planning and programs, the notification need be sent only to the appropriate State clearinghouses.

(c) Notification will include a summary description of the project for which assistance is being sought. The summary description will contain the following information, as appropriate and to the extent available:

(1) Identity of the applicant agency or organization.

(2) The geographic location of the project to be assisted. A map should be provided, if appropriate.

(3) A brief description of the proposed project by type, purpose, general size of scale, estimated cost, beneficiaries or other characteristics which will enable the clearinghouses to identify agencies of State or local government having plans, programs, o projects that might be affected by the proposed project.

(4) A statement as to whether or no the applicant has been advised by th regional commission from which a sistance is being sought that it will b required to submit environmenta impact information in connection wi the proposed project.

(5) The Federal program title a number of the regional commissio from which assistance is being soug as indicated in Attachment D of th latest "Catalog of Federal Domest Assistance." (The "Catalog" is issu annually in the spring and is updat during the year.)

§ 581.6 Action by the regional comm sion.

(a) The Federal Cochairm through his immediate office through the regional commissi shall insure that all applications assistance have been submitted to propriate clearinghouses at the ea est possible time for review prior approval by the regional commissio

(b) Applications that do not ca evidence of clearinghouse review be returned to the applicant with structions to furnish such evide All applications must contain a S Application Identifier (SAI) num This is mandatory for use in notify clearinghouses of action taken on application.

(c) The Federal Cochairm through his immediate office through the regional commis shall insure that appropriate clearinghouses are notified of the final disposition of an application. Such notification should take place within 7 working days if possible but in no event more than 15 calendar days. The standard multipurpose form, SF 424, as prescribed by Federal Management Circular 74-7, will be used for this purpose.

(d) Where a clearinghouse has recommended that an application not be approved or approved only with specific and/or major substantive changes, and the regional commission subsequently approves the application without such changes, the Federal Cochairman, through his immediate office or through the regional commission, shall insure that the clearinghouse is furnished a written explanation of the action taken in addition to the completed standard multipurpose form SF424.

(e) Where a clearinghouse has recommended against approval of a project on the grounds that it conflicts with or duplicates a Federal or federally assisted project, the Federal Cochairman, through his immediate office or through the regional commission, shall insure that the agency assisting the project is consulted prior to approval of the application by the regional commission.

§ 581.7 Exemptions.

Projects exempted from these procedures include:

(a) Projects initiated by the regional commission, except for those having a significant impact on a specific local area.

(b) Administrative expense grants requested by substate planning and development organizations which are themselves areawide clearinghouses.

(c) Projects estimated to cost $5000 or less.

(d) Amendments to the grant which do not involve substantive changes in the project's scope of work.

(e) Assistance to organizations and institutions for the provision of education or training not designed to meet the needs of specific individual states or localities.

(f) Assistance to educational institutions for activities that are part of a school's regular academic program and are not related to local programs of health, welfare, employment, or other social service agencies.

PART 590—RULES AND PROCEDURES OF THE FEDERAL COCHAIRMEN

Subpart A—[Reserved]

Subpart B—Four Corners Regional Commission

Sec.
590.10 Employee responsibilities and conduct.

Subparts C—D [Reserved]

Subpart E—Ozarks Regional Commission

590.40 Employee responsibilities and conduct.

AUTHORITY: 42 U.S.C. 3181 *et seq.*

Subpart A—[Reserved]

Subpart B—Four Corners Regional Commission

§ 590.10 Employee responsibilities and conduct.

The Federal Cochairman of the Four Corners Regional Action Planning Commission adopts and makes applicable to employees of the Office of the Federal Cochairman the rules of the United States Department of Commerce regarding Employee Responsibilities and Conduct. These rules of the Department of Commerce have heretofore been approved by the Civil Service Commission and appear in the Code of Federal Regulations as Title 15, Subtitle A, Part O.

[41 FR 52441, Nov. 30, 1976]

Subparts C—D [Reserved]

Subpart E—Ozarks Regional Commission

§ 590.40 Employee responsibilities and conduct.

The Federal Cochairman of the Ozarks Regional Action Planning Commission adopts and makes applicable to employees of the Office of the Federal Cochairman the rules of the

United States Department of Commerce regarding Employee Responsibilities and Conduct. These rules of the Department of Commerce have heretofore been approved by the Civil Service Commission and appear in the Code of Federal Regulations as Title 15, Subtitle A, Part O.

[40 FR 60039, Dec. 31, 1975]

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually

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At 50 FR 12478, Mar. 28, 1985, Parts 118, 119 and 130 were removed and Parts 120 and 122 were revised. The following table provides a cross reference to specific regulations as they appear in both the existing regulations and the final rule. Because of repetition in the existing regulations and because the final regulations represent a rearrangement of some sections, several previously existing citations may have the same citation as a reference or may have more than one citation in the final regulations as a reference. Those instances in which Pub. L. 97-35 appears as a reference indicates our authority was modified by the new law. Use of the word "out" appears as the indication that the existing regulation was dropped in the final rule.

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